(22,709)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 311.

THE RUBBER TIRE WHEEL COMPANY AND CONSOLIDATED RUBBER TIRE COMPANY, PETITIONERS,

vs.

THE GOODYEAR TIRE & RUBBER COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 11, 1913.

a

No. 2037.

United States Circuit Court of Appeals, Sixth Circuit.

THE RUBBER TIRE WHEEL COMPANY and THE CONSOLIDATED RUBBER TIRE COMPANY, Appellants,

vs.

THE GOODYEAR TIRE AND RUBBER CO., Appellee.

Appeal from the Circuit Court of the United States for the Southern District of Ohio.

RECORD.

Original Transcript Filed February 5, 1910.

1 TRANSCRIPT OF RECORD.

THE UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division, ss:

In the Circuit Court of the United States within and for the District and Division Aforesaid.

Present, the Honorable John E. Sater, District Judge.

Among the proceedings had were the following, to-wit:

In Equity. No. 6280.

THE GOODYEAR TIRE & RUBBER COMPANY

vs.

THE RUBBER TIRE WHEEL COMPANY and CONSOLIDATED RUBBER TIRE COMPANY.

Be it remembered, that on the 23rd day of August, in the year of our Lord one thousand nine hundred and seven, there was filed in the Clerk's Office of the Court aforesaid, a certain Bill of Complaint in this cause, which said Bill of Complaint is clothed in words and figures following, to-wit:

Bill of Complaint.

United States Circuit Court, Southern District of Ohio, Western Division.

In Equity.

THE GOODYEAR TIRE & RUBBER COMPANY

vs.

THE RUBBER TIRE WHEEL COMPANY and CONSOLIDATED RUBBER TIRE COMPANY.

Order to Show Cause.

Upon the filing of this bill and the application of counsel for The Goodyear Tire & Rubber Company, it is ordered as follows:

(1) That The Rubber Tire Wheel Company and the Consolidated Rubber Tire Company, defendants, are given until the 7th day of September, 1907, within which to show cause why they shall not be enjoined from suing, and interfering with, the customers of The Goodyear Tire & Rubber Company, in view of the decision of the circuit court of appeals for the sixth Circuit holding the patent to Grant No. 554,675, to be null and void, as prayed in the bill, and shall serve on the solicitor for complainant, on or before that date, copies of their showing.

2 (2) That The Goodyear Tire & Rubber Company is given until the 21st of September, 1907, within which to file affidavits in rebuttal of the showing made by the defendants and serve copies thereof on the solicitors for defendants.

(3) That the Marshal serve on defendants a copy of the bill of complaint and of this order when serving the subpœnas.

(4) That the motion of The Goodyear Tire & Rubber Company for such injunction will be set for hearing upon application of its counsel immediately after the rebuttal affidavits are filed.

_____,

United States Judge.

Cincinnati, Ohio, August, 1907.

United States Circuit Court, Southern District of Ohio, Western Division.

In Equity.

THE GOODYEAR TIRE & RUBBER COMPANY
vs.
THE RUBBER TIRE WHEEL COMPANY and CONSOLIDATED RUBBER TIRE COMPANY.

Bill of Complaint.

To the Judges of the Circuit Court of the United States for the Southern District of Ohio, Western Division:

The Goodyear Tire & Rubber Company, a corporation duly organized and existing under the laws of the State of Ohio, a citizen of said State, and an inhabitant of the northern district of Ohio, eastern division, with its principal place of business at Akron, in Summit County, in said State, brings its bill of complaint against The Rubber Tire Wheel Company, a corporation organized and existing under the laws of the State of Ohio, a citizen of said State and an inhabitant of the southern district of Ohio, western division, with an office at Springfield, in Clark County, in said State, and the Consolidated Rubber Tire Company, a corporation organized and existing under the laws of the State of New Jersey, a citizen and an inhabitant of said State, with offices and places of business at Cincinnati and Akron, in said State of Ohio, upon a cause of action in which the matter in dispute exceeds, exclusive of interest and costs, the sum and value of two thousand dollars.

(1) And thereupon your orator complains and says that prior to the year 1889, and from that time to the present continuously, it was and has continued to be engaged in the business of manufacturing and selling solid rubber tires for vehicles; that at the February term, 1899, said defendant, The Rubber Tire Wheel Company, filed a bill in the Circuit Court of the United States for the northern district of Ohio, eastern division, against your orator as defendant, in which bill it was alleged, among other things, that complainant therein was the owner of a certain alleged patent, granted out of the Patent Office of the United States to Arthur W. Grant on the 18th day of February, 1896, and numbered 554,675, for rubber tired wheels, and that the defendant (your orator herein) had infringed said alleged patent by the manufacture and sale of rubber tires embodying the elements of said alleged invention described and claimed in said alleged patent. Your orator appeared to said bill and answered the same, setting up, among other defenses, that the said patent was invalid; the complainant in said cause filed a replication to said answer, proofs were taken by the parties respectively, and said cause was submitted for final hearing by said court upon the bill, answer, replication, proofs and arguments of counsel on the 25th and 26th days of

3

March, 1901, and taken under advisement by the court. Afterwards said court made and rendered its decision in said cause, in which it found for the complainant, upon the ground stated in the opinion, filed at the time of the decision, that said patent No. 554,675 was valid and that the solid rubber tires manufactured and sold by the defendant in said cause (your orator here), of which specimens were in evidence before the court, were an infringement of said patent; and thereupon said court, on the 9th day of December, 1901, made and entered its decree, by which it was ordered and adjudged that both claims of said patent were good and valid and were infringed by said rubber tires of the defendant, and an injunction was ordered and the cause referred to a master to take and state an account; that thereafter said injunction was superseded.

(2) And thereupon your orator, defendant there and complainant here, prayed an appeal from said judgment and decree to the United States Circuit Court of Appeals for the sixth circuit, which was granted, and after due proceedings had, your orator filed a duly certified transcript of the pleadings, record, proceedings and judgment in said cause, with its appeal bond, as required by the court, in the office of the Clerk of said United States Circuit Court of Appeals for the sixth circuit on the 31st day of January, 1902, and the said cause came on to be heard in due form on appeal in said
4 court on the 14th and 15th days of April, 1902, before the Honorable Circuit Judges Lurton, Day and Severens, and was argued by counsel, and taken under advisement until the 6th day of May, 1902, when the said court rendered its decision in said cause and reversed the said judgment of the United States Circuit Court for the northern district of Ohio, eastern division, and held said patent 554,675 to be null and void, and directed that the bill be dismissed; whereupon said Circuit Court of the United States for the northern district of Ohio, eastern division, in conformity with the decree of said Circuit Court of Appeals, made and entered the final decree dismissing said suit on June 26th, 1902. The opinion of said Circuit Court of Appeals making and announcing said decision and stating the ground of the same is printed in the Federal Reporter, Vol. 116, p. 363, to which reference is hereby made. A printed copy of the record in said cause in the Circuit Court of Appeals of the United States for the sixth circuit will be produced in court, marked "Exhibit A," and copies of the decree of said Court of Appeals and of said Circuit Court are filed herewith and marked, respectively, "Exhibit B" and "Exhibit C."

(3) Your orator further shows that, in due order of pleading, the Consolidated Rubber Company was joined as co-complainant with the defendant, The Rubber Tire Wheel Company, by the filing of a supplemental bill on the 24th of May, 1900, setting forth the equitable interest of the Consolidated Rubber Tire Company in said alleged letters patent, and was a party to all of the proceedings, judgments and decrees in said cause, and that since, or before that date, and now, The Rubber Tire Wheel Company and the Consolidated Rubber Tire Company, are, respectively, owners of the legal title to said alleged patent 554,675, and of the alleged

equitable interest therein, and that said Consolidated Rubber Tire Company, as such alleged equitable owner, now has the alleged exclusive license, right and authority to make and vend rubber tires under said alleged patent 554,675, and has had such alleged right since or before said last named date.

(4) Your orator further shows that said The Rubber Tire Wheel Company and the Consolidated Rubber Tire Company, in said above recited cause, petitioned the Supreme Court of the United States that the writ of certiorari be issued directing the Circuit Court of Appeals of the United States for the sixth circuit to certify to that court for its review and determination the said cause of your orator vs. The Rubber Tire Wheel Company and the Consolidated Rubber Tire Company filing said petition at the October
5 Term, 1902, of the Supreme Court of the United States, and that said petition was denied and dismissed on the 27th of October, 1902, the denial of said petition being reported in 187 U. S. 641, which is hereby referred to.

(5) Your orator, further complaining, shows to the court, on information and belief, that in June, 1907, the defendants herein brought suit, by bill in equity, in the Circuit Court of the United States for the eastern district of Missouri, eastern division, against the Banner Buggy Company and Russel E. Gardner, both of St. Louis, Missouri, setting up the same alleged United States patent to Arthur W. Grant, No. 554,675, dated February 18th, 1896, which was set up in said suit against your orator, and alleging infringement thereof by the manufacture, use and sale of solid rubber tires by the defendants therein containing the alleged invention covered by said patent, and praying for a permanent and also a temporary injunction, and an accounting of alleged profits and damages, and are intending and threatening to prosecute said suit to a decree or final hearing. Said Banner Buggy Company and Russell E. Gardner, defendants in said cause, are customers of your orator, and have been for some years past; that large portions of the solid rubber tires which they have handled, used or sold, and have been lately handling, using and selling, were manufactured by your orator and sold to them by it, and are involved in said suit; that these tires are the same, or substantially the same, as your orator's tires involved in said former suit when said alleged patent was adjudicated to be void; that said suit against these customers is an unlawful interference with your orator's trade with said customers, and will, if a decree is taken therein against said customers, create an irreparable loss to your orator and a menace to its trade with others.

(6) Your orator, further complaining, therefore, shows the court that the particular issue finally decided in those judgments between your orator and the defendants herein was that said alleged letters patent No. 554,675, dated February 18th, 1896, were null and void and that your orator's right to make and sell its said solid rubber tires as against any claims or interference by the defendants herein, under said alleged patent, was conclusively and finally adjudicated by said judgments in favor of your orator.

(7) Your orator, further complaining, shows to the court that by many years of devotion to business, and by a large expenditure of money and effort, it has built up an extensive and profitable trade in said solid rubber tires for vehicles, extending to all parts of
6 the United States; that your orator's customers are chiefly carriage manufacturers and carriage repairers, who purchase your orator's said rubber tires, being the same or substantially the same solid rubber tires as those before the courts in said cause wherein said alleged patent was held to be null and void; that these customers are very numerous and are scattered all over the United States; that the defendants herein, and particularly the Consolidated Rubber Company, manufacture and sell similar rubber tires; that it is not a matter of great importance to your orator's customers whether they buy and use your orator's rubber tires or the similar tires offered them by the defendants to deter your orator's customers and buyers generally from dealing with your orator by fears and threats of suit by the defendants under said alleged patent. From these circumstances it has happened that many of your orator's customers have been intimidated and others are now being intimidated by said suit now pending against said Banner Buggy Company and Russell E. Gardner, your orator's customers, as aforesaid; that some of your orator's customers are withholding the sending in of orders to your orator for its said rubber tires; that your orator is being compelled to offer indemnifying bonds and other guarantees to its said customers and to buyers generally, to hold them harmless as against any alleged claims and demands, threats of suits and suits by said defendants herein against them, all to the irreparable loss and injury to your orator's said business in said rubber tires and to the confusion, loss of trade and interference with your orator's said business in said rubber tires, conducted and existing by reason of the rights of your orator, as established by the said final decrees.

Inasmuch, therefore, as your orator is without any remedy, except in a court of equity, your orator prays that said defendants may be required to make full and direct answer to this bill (but not under oath, answer under oath being hereby waived; that the defendants, The Rubber Tire Wheel Company and the Consolidated Rubber Tire Company, may be enjoined against the Banner Buggy Company and Russell E. Gardner, in the Circuit Court of the United States for the eastern district of Missouri, eastern division, and also perpetually enjoined against bringing any suit or suits against any one in any United States court for alleged infringement of said alleged patent to Arthur W. Grant, No. 554,675, dated February 18th, 1896, by reason of the purchase, use or sale of any of said solid rubber tires manufactured by, and purchased from, your orator; and that your orator may have such other and
7 further relief as the equity of the case may require.

Your orator further shows that it has reason to fear, and does fear, that unless restrained by the order of this court pendente lite, said defendants will continue to send threatening letters and circulars to your orator's customers, as they have done in the past and are now doing, and to bring other suits against other customers

of your orator, as they have done in the past and are now threatening to do, and will continue to divert and interfere with, and endeavor to divert and interfere with, as they have already begun to do, your orator's said trade in said rubber tires, the right to pursue which was finally adjudicated, as aforesaid, all for the purpose of intimidating your orator's said customers and deterring them and others from buying said solid rubber tires from your orator, and from freely purchasing from your orator its said tires, so that before an injunction granted after final hearing can be issued, your orator will have suffered remediless loss in its business, and the main object of this present suit will have been defeated.

Wherefore your orator prays that, upon notice hereafter to be served, an injunction may issue pendente lite and until the further order of the court, restraining said The Rubber Tire Wheel Company and said Consolidated Rubber Tire Company, defendants, and each of them, as your orator has hereinbefore prayed.

And may it please your Honors to grant unto your orator a writ of subpœna ad respondendum, issuing out of and under the seal of this Honorable Court and directed to said The Rubber Tire Wheel Company and said Consolidated Rubber Tire Company, commanding them, and each of them, to appear and make answer to this bill of complaint and to perform and abide by such order and decree herein as to this court shall seem just.

And your orator will ever pray.

THE GOODYEAR TIRE & RUBBER COMPANY,
By C. W. SEIBERLING, *Treas.*

H. A. TOULMIN,
Solicitor and of Counsel for Complainants.

STATE OF OHIO,
County of Summit, ss:

C. W. Seiberling, having been duly sworn, on his oath says that he is the Treasurer of The Goodyear Tire & Rubber Company, complainant named in the foregoing bill; that he has read the bill and that the same is true, of his own knowledge, except as to
8 those matters which are stated upon information and belief, and that as to them he believes the bill to be true.

C. W. SEIBERLING.

Sworn to and subscribed before me, a Notary Public in and for Summit County, Ohio, this 22nd day of August, 1907.

[SEAL.]

FRANCIS SEIBERLING,
Notary Public, Summit County, Ohio.

EXHIBIT B.

United States Circuit Court of Appeals for the Sixth Circuit.

No. 1071.

GOODYEAR TIRE & RUBBER CO.
vs.
RUBBER TIRE WHEEL CO.

Appeal from the Circuit Court of the United States for the Northern District of Ohio.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Northern District of Ohio, and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said Circuit Court, in this cause be and the same is hereby reversed with costs and the cause is remanded to the said Circuit Court with direcitons to dismiss the bill of complaint.

May 6th, 1902.

EXHIBIT B.

United States Circuit Court of Appeals for the Sixth Circuit.

I, Frank O. Loveland, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of the Decree rendered May 6th, 1902, in the case of Goodyear Tire Rubber Company vs. Rubber Tire Wheel Company, No. 1071, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said Court, at the city of Cincinnati, Ohio, this 10th day of August, A. D., 1907.

[SEAL.] (Signed) FRANK O. LOVELAND,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

EXHIBIT C.

THE UNITED STATES OF AMERICA,
Northern District of Ohio,
Eastern Division, ss:

At a Stated Term of the Circuit Court of the United States, within and for the Eastern Division of the Northern District of
9 Ohio, begun and held at the City of Cleveland, in said District, on the first Tuesday in April, being the 1st day of said month, in the year of our Lord one thousand nine hundred and two, and of the Independence of the United States of America the one hundred and twenty-sixth, to wit: on the 26th day of June, A. D. 1902.

Present: Honorable Francis J. Wing, United States District Judge.

Among the proceedings then and there had were the following, to-wit:

No. 5887. Chancery.

THE RUBBER TIRE WHEEL COMPANY et al.
vs.
THE GOODYEAR TIRE & RUBBER COMPANY.

This cause having been removed from this Court to the United States Circuit Court of Appeals for the Sixth Circuit by the appeal of The Goodyear Tire and Rubber Company, et al., from the decree of this Court in this cause in the above entitled action on the 9th day of December, 1901, and the said Circuit Court of Appeals having ordered and adjudged and decreed that the decree of the said Circuit Court in this cause be and the same is hereby reversed with costs with directions to dismiss the bill of complaint.

And the said Circuit Court of Appeals having remanded said cause to this Court as appears by its mandate now here.

Now, on motion of H. A. Toulmin and Squire, Sanders & Dempsey, Solicitors for respondents, it is ordered that the said mandate be filed in this Court and that the decree of said Circuit Court of Appeals be entered as the decree of this Court and in accordance with such mandate it is further ordered, adjudged and decreed that the bill of complaint herein be and the same is hereby dismissed and that said Complainant pay all costs herein expended and taxed for which execution is awarded.

THE UNITED STATES OF AMERICA, *ss:*

I, Irvin Belford, Clerk of the Circuit Court of the United States, within and for the Northern District of the State of Ohio, do hereby certify that I have compared the within and foregoing transcript with the original order entered upon the Journal of the proceedings

of said Court in the therein entitled cause, at the term, and on the day therein named; and do further certify that the same is a true, full and complete transcript and copy thereof.

Witness my official signature, and the seal of said Court, at Cleveland, in said District, this 12th day of August, A. D.,
10 1907, and in the 132d year of the Independence of the United States of America.

[SEAL.] IRVIN BELFORD, *Clerk,*
(Signed) By A. H. ELLIOTT,
Deputy Clerk.

Amendment to Bill of Complaint.

And to-wit: on the 11th day of May, A. D. 1908, came the Complainant by its Solicitor and filed in the Clerk's Office of the Court aforesaid, a certain Amendment to Bill of Complaint, in this cause, which said Amendment to Bill of Complaint is clothed in the words and figures following, to-wit:

United States Circuit Court, Southern District of Ohio, Western Division.

In Equity. No. 6280.

THE GOODYEAR TIRE & RUBBER COMPANY
VS.
THE RUBBER TIRE WHEEL COMPANY and CONSOLIDATED RUBBER TIRE COMPANY.

Amendment to Bill of Complaint.

Now comes the Complainant, and by leave of Court first had and obtained, amends his bill of complaint herein as follows:

After paragraph numbered 5 insert:—

(5*a*) Your orator, further complaining, shows to the Court that among the said customers of your orator who have been purchasing its said rubber tires is the firm of Jose Alvarez & Co., located at Havana, in the Republic of Cuba, to whom your orator, for several years last yast, has been shipping said rubber tires, from its factory in Akron, Ohio; that said Alvarez & Co. are an established firm in Havana, Cuba, being dealers in carriages and saddlery, at Nos. 8 and 10 Calle de Aramburu Street, and up to a few weeks ago (April, 1908) had been buying large quantities of your orator's said rubber tires and during said several years last past; that said Alvarez & Co. have been reselling in the Republic of Cuba your orator's said rubber tires so exported by your orator into said Republic; that the manufacture and sale of said tires to said Alvarez & Co. were in pursuance of and under the decree aforesaid rendered by the United States Circuit Court of Appeals for the Sixth Circuit in favor of your orator

in the suit lately pending between it and The Rubber Tire Wheel Company and the Consolidated Rubber Tire Company, defendants herein, and that this trade between your orator and its said customer has been profitable and valuable to your orator and has continued in growing quantities of said rubber tires until a few weeks ago,
11 as aforesaid, when such trade was interrupted and suspended as aforesaid by reason of the unlawful interference by the defendants herein, and each of them, through their agent, one H. F. Manning, resident in Havana, Cuba, as a consequence and culmination of a suit theretofore instituted by The Rubber Tire Wheel Company through its said agent H. F. Manning, in Havana, Cuba, against said Alvarez & Co., to the great and irreparable loss and injury of your orator.

Said action by said The Rubber Tire Wheel Company, through its said agent H. F. Manning, your orator avers, on information obtained by investigation and on belief, was, in pursuance of the practice in Cuba, first instituted against its said customer Alvarez & Co., or against Jose Alvarez, as the manager and chief director of said firm, by causing a Notary Public of Havana, Cuba, to serve notice upon said customer to refrain from selling your orator's said rubber tires, said notice to refrain from being in the nature of an injunction and accompanied by a warning that The Rubber Tire Wheel Company would institute civil and criminal proceedings against your orator's said customer; that, pursuant to said Notarial action an order was issued at the instance of said The Rubber Tire Wheel Company, through its agent H. F. Manning, to seize at the store of said Alvarez & Co. specimens of rubber tires they were selling, and that as a consequence of said seizure said Jose Alvarez & Co. were compelled to deliver to the officers making the seizure a rubber tire of your orator's said manufacture, being one of the tires so sold by your orator to said customer; that, pursuant to said prosecution of your orator's customer by The Rubber Tire Wheel Company, an indictment was procured against said Jose Alvarez, as the manager and principal party in the firm of Jose Alvarez & Co., on this charge of alleged infringement by reason of the sale by said Alvarez and his company of your orator's said tires; that subsequently said indictment was quashed or terminated by an order of the court wherein the same was pending; that more lately a Court of review vacated the order annulling the indictment against your orator's said customer Jose Alvarez and ordered the indictment returned to the Judge of the Court of first instance (where the indictment arose), with directions to proceed with the trial of said Jose Alvarez under said indictment.

And further, the trade of said Alvarez & Co. in said Goodyear rubber tires is not only in the City of Havana, but extends largely throughout the island of Cuba, all of which trade is cut off
12 and suspended by the interference by defendants herein with said Jose Alvarez and his firm, Jose Alvarez & Company, as elsewhere averred herein.

The said action by said The Rubber Tire Wheel Company, through its said agent H. F. Manning, against your orator's said

customer, is based upon letters patent to A. W. Grant, No. 554,675, granted February 18th, 1896, as registered in Cuba, and which are the same letters patent that were declared null and void by the Circuit Court of Appeals for the Sixth Circuit in its decree aforesaid; said registration of said Grant patent in Cuba having been made by The Rubber Tire Wheel Company during the occupancy of the Island of Cuba by the United States military forces, namely, by a conditional registration on the 3rd of July, 1900, numbered 589, and by a final registration on the 29th of March, 1901, numbered 1223, pursuant to the provisions of a circular of April 11th, 1899 (Circular No. 12), Division of Customs and Insular Affairs, War Department, Washington, D. C., promulgated and published by G. D. Meiklejohn, Acting Secretary of War.

Wherefore your orator shows the Court that said The Rubber Tire Wheel Company and the Consolidated Rubber Tire Company, parties to said final decree in favor of your orator by the Circuit Court of Appeals for the Sixth Circuit, are now interfering with and obstructing the business of your orator in its said rubber tires manufactured and sold at Akron, Ohio, the right to make and sell which was secured by said decree, and are conducting this interference and obstruction by means of acting as American — Complainants suing as aforesaid your orator's said customer in the Courts of Cuba under the same letters patent, registered in Cuba under United States authority, which said Circuit Court of Appeals for the Sixth Circuit held to be null and void in and by said final decree in favor of your orator.

Inasmuch, therefore, as your orator is without any remedy except in a Court of Equity, your orator prays that said defendants, The Rubber Tire Wheel Company, and the Consolidated Rubber Tire Company and their agent, H. F. Manning, and another agent, attorney and officer may be enjoined against proceeding further with the prosecution of their said suit against Jose Alvarez or Jose Alvarez & Co., your orator's aforesaid customer, or any other customer or customers of your orator, and from instituting any other suit against any other customer of your orator on said letters patent 554,675, or any certificate or registration thereof here or elsewhere.

And said bill is further amended as follows:—

13 Paragraph 7, line 5, after "United States," insert "and in many foreign countries, particularly in the Republic of Cuba;"

Same paragraph, line 6, after "repairers," insert "and dealers."

In the same paragraph, line 11, after "United States," insert "and in numerous foreign countries, and particularly in the Republic of Cuba."

THE GOODYEAR TIRE AND RUBBER CO.
F. A. SEIBERLING, *President.*

——— ———,
Solicitor and of Counsel for Complainant.

STATE OF OHIO,
County of Summit, ss:

F. A. Seiberling having been duly sworn, on his oath says that he is President of The Goodyear Tire & Rubber Company, complainant named in the foregoing amendment to the bill of complaint herein; that he has read the said amendment and that the same is true, of his own knowledge, except as to those matters which are stated upon information and belief, and as to them he believes the amendment to be true.

F. A. SEIBERLING.

Sworn to and subscribed before me, a Notary Public in and for Summit County, Ohio, this 8th day of May, 1908.

[SEAL.] GEORGE W. ROGERS,
Notary Public, Summit County, Ohio.

Affidavit of Frederick A. Seaman.

And on the 7th day of July, A. D., 1908, there was filed in the Clerk's Office of said Court, a certain affidavit of Frederick A. Seaman, which affidavit is clothed in the words and figures following, to-wit:

United States Circuit Court, Southern District of Ohio, Western Division.

THE GOODYEAR TIRE & RUBBER COMPANY
vs.
THE RUBBER TIRE WHEEL COMPANY and THE CONSOLIDATED RUBBER TIRE COMPANY.

STATE OF NEW YORK,
County of New York, ss:

Frederick A. Seaman being duly sworn says that he is the secretary and treasurer of The Rubber Tire Wheel Company and is familiar with its transactions and affairs, and has been so familiar for upwards of eight years last past; that on or about the 28th day of August, 1903, the said Goodyear Tire & Rubber Company entered into a license agreement with the said The Rubber Tire
14 Wheel Company, consisting of four parts, blank copies of which are hereto annexed and made part of this affidavit, marked License, Supplementary Agreement, Renewal Agreement, and Licensee's Agreement.

That the said Goodyear Tire & Rubber Company executed said agreement in the form of said exhibits hereto attached, with the blanks duly and properly filled in, and pursuant thereto manufactured tires thereunder and under said Grant patent No. 554,675, for the period of about one year; and the tires so manufactured by said

Goodyear Tire & Rubber Company during said time contained all the elements of, and were made substantially in accordance with the specifications of said Grant patent.

That the said Goodyear Tire & Rubber Company paid royalty under said agreement and in amount as therein provided for on such tires so manufactured under said patent to the said The Rubber Tire Wheel Company for the period of about one year, amounting to several thousand dollars.

That the said agreement was not renewed at the expiration of the first year.

That on or about December 11, 1903, the said defendant, Goodyear Tire & Rubber Company, united with others in a letter to the Rubber Tire Wheel Company, a copy of which is hereto annexed and marked "Defendant's Exhibit, Licensee's Letter."

The original of said letter was duly signed by the Goodyear Tire & Rubber Company and the other companies whose names are attached thereto.

I present herewith an extract from The Havana Daily Post, an English paper printed and published in Havana, Cuba, and dated October 29, 1907, which contains the following advertisement purporting to be issued by Jose Alvarez and Co., of Havana, in the following words:

"The Central.
Trademark Registered.
Firestone and Goodrich

are the best rubber tires known for carriages and automobiles. Sold and put on by the exclusive agents in Cuba.

Jose Alvarez and Co.,
Saddlery, Carriage Outfits and Cordage a Specialty,
Nos. 6 to 10 Aramburo St., Havana.
Telephone No. 1382."

I also present an extract from El Mundo, a daily newspaper published in Spanish in Havana, Cuba, on the 6th of January,
15 1908, containing an announcement purporting to be published by the said Jose Alvarez, of which the following is a translation:

"Director of El Mundo.

MY DEAR SIR, ETC.: In your issue of today, you publish under the title 'Usurpation of Patent' and as the brevity with which this notice of denunciation was given against me as a member of the firm of Jose Alvarez & Co. by the solicitor Mr. Granados for usurpation of patent gives occasion to twisted interpretations, and judgments unfavorable to my person and the firm which I represent, permit me to trouble your eminent attention with some explanation, whose publication I pray you to the end that your readers know what is the truth in the matter.

That we are the exclusive agents in the island of Cuba of the noted (or celebrated) solid rubber tires, of two outside wires, marked

'Firestone Tire and Rubber Co.' accepted by all without discussion as the best known for carriages and motors, is a thing known from Cape Saint Antonio to Point Maise (i. e. from one end of the island to the other).

The denunciation of Solicitor Granados does not allude to these tires, but solely to those which for their adaptation to the wheels require the employment of two wires that run parallel through the interior of the rubber, which circumstance according to the agent of the Rubber Tire Wheel Co. is one of the characteristic elements and essentials of the Grant Patent in the U. S.

The Rubber Tire Wheel Co. are not the only ones that manufacture in the U. S. *an* export solid tires of two wires for vehicles, since also, during many years numberless factories of these U. S. among which we cite concretely the Firestone Tire and Rubber Co., The Goodyear Tire and Rubber Co. and The B. F. Goodrich Co., all of Akron, Ohio, whom we represent for years, and furthermore we receive the marks "Security" and "Pennsylvania" equally of two inside wires, manufactured in the U. S.

The Rubber Tire Wheel Co. has had litigation before the competent tribunals of the U. S. with all the factories that make tires with two inside wires, resulting sometimes favorable and others adversely to the Rubber Tire Wheel Co. The judgment devolved and pronounced by the Court *and* Courts of Appeal of the U. S. makes it evident and true that the manufacture and exportation of these tires has continued always, without interruption, and with the protection of the laws of that country up to this date.

We, preparing ourselves in time for whatever event, have received from the Goodyear Tire and Rubber Co.'s factory,
16 duly certified and legalized copies of the entire process, from the commencement until the last decision dictated by the Supreme Court against The Rubber Tire Wheel Co. and in favor of The Goodyear Tire and Rubber Co., represented by us, to whom this last resolution gives authority for the manufacture of tires of two inside wires. As long as there is a law in the U. S. that authorizes and protects the manufacture and exportation of said tires, I understand that I have the right to sell them freely in Cuba. And as we have never sold, and do not sell the tires of The Rubber Tire Wheel Co., whose mark is said to be inscribed in this island, indeed as it was not convenient to us, we maintain the criterion that we can sell all rubber tires of two inside wires that are not made by the Rubber Tire Wheel Co. and we will consequently make our rights prevail before the courts no- doubting they will render judgment in our favor, which we deem justice."

This article shows that the said Jose Alvarez is selling rubber tires manufactured by the Firestone Tire & Rubber Co., the Goodyear Tire & Rubber Co., the B. F. Goodrich Co., The Pennsylvania Rubber Co., and a tire called "Security," all of these tires being made in the United States.

I am informed and believe that the articles thus sold by Jose Alvarez consist of rubber strips manufactured in the United States and shipped to Jose Alvarez by the manufacturers, and these rubber

strips contain longitudinal passages for wires; but that the rubber strips are sold by the said Jose Alvarez to be assembled by the purchasers with wires and channels made by other parties.

FREDERICK A. SEAMAN.

Subscribed and sworn to before me this 16th day of June, 1908.
[SEAL.] ANNA E. WALLACE,
Notary Public in and for Kings County.

Certificate filed in New York County.
My commission expires Mar. 30, 1909.

(Copy.)

DEFENDANT'S EXHIBIT, LICENSEE'S LETTER.

NEW YORK CITY, *Dec.* 11, 1903.

Rubber Tire Wheel Company, 40 Wall Street, City.

GENTLEMEN: Referring to the license which we have under your so-called Grant Patent, it is our opinion that unless certain changes in a very exceptional manner, or something very unexpected
17 occurs, it will be advisable for all of our Companies to continue acting under such license for its full term.

The reason why this letter is given to you is to make you satisfied to discontinue your litigation with the Kokomo Rubber Company so they may become members of the Licensee Association.

Yours very truly,
(S'g'd) G. F. GOODRICH COMPANY,
By B. G. WORK,
Vice-Pres't Rubber Goods Mfg. Company.
ERNEST HOPKINSON,
Goodyear Tire & Rubber Company.
F. A. SEIBERLING,
Gen. Mgr. Firestone Tire & Rubber Company,
H. S. FIRESTONE, *P't.*

License Agreement. (*License.*)

This agreement, made this — day of ——, 1903, by and between The Rubber Tire Wheel Company, a corporation organized and existing under the laws of the state of Ohio, party of the first part, and a corporation organized and existing under the laws of the state of —, party of the second part, witnesseth, as follows:

Whereas, the party of the first part is the owner of the entire right, title and interest in and to Letters Patent of the United States No. 554,675, dated February 18, 1896, and granted to Arthur W. Grant for invention in vehicle tires; and whereas, the party of the second part is desirous of obtaining the right to manufacture, use

and sell vehicle tires made under and in accordance with said Letters Patent;

Now, therefore, to all whom it may concern, be it known that for and in consideration of the sum of one dollar ($1.00) and other good and valuable considerations paid by the party of the second part to the party of the first part, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The party of the first part hereby gives and grants unto the party of the second part for the period of one year from the date hereof, and to the extent set forth in the "Supplementary Agreement" hereto annexed, the right and license to manufacture, use and sell vehicle tires and wheels made under and in accordance with said letters patent, except in the following territory, to-wit:

Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, Virginia, District of Columbia, Maryland, city of Amesbury, Mass.; Berkshire county, Mass.; that
18 part of Vermont lying west of longitude 72 degrees and thirty minutes; counties of Essex, Clinton, Hamilton, Saratoga, Rensselaer, Schenectady, Schoharie, Columbia, Ulster, Franklin, Warren, Fulton, Washington, Albany, Montgomery, Greene and Dutchess in state of New York; California, Oregon, Washington, Idaho, Montana, Nevado, Arizona, New Mexico, counties of Montgomery, Butler and Warren in state of Ohio; Louisville, Ky.; New Albany, Ind.; radius of fifty miles of St. Paul, Minn.; city of Indianapolis, Ind., and the state of Tennessee.

And the party of the first part hereby agrees that during the existence of this agreement it will vigorously prosecute any and all infringers of said letters patent, except such as may be committed in the Sixth Circuit of the United States, Circuit Court of Appeals.

11. The party of the second part hereby agrees that it will pay on or before the 10th day of each calendar month to the party of the first part as a royalty for the right and license hereby granted, the sum of four per cent (4 per cent) of the net selling price of said tires and the further royalty of 20 per cent of the amount in dollars and cents of tires sold and delivered under this license during the preceding month over and above the quota specified in the "Supplementary Agreement" annexed hereto; that immediately on the signing of this agreement it will pay on its royalty account the sum of $500 for each one per cent and ratably for each fraction thereof of its quota specified in said "Supplementary Agreement"; that during the existence of this agreement it will keep accurate books of account of the tires made, sold and delivered under this agreement, to whom sold, and the net selling price thereof; and that it will render to the party of the first part on or before the tenth day of each and every month during the existence of this agreement a statement under oath setting forth the amount of tires sold and delivered under this agreement and the net selling price thereof.

111. It is hereby mutually agreed by and between the parties hereto that this license agreement shall in no way prejudice either of the parties hereto, but that the legal status of the parties existing

prior to the execution of this agreement shall remain unaffected by this agreement in every respect.

In witness whereof, the parties hereto have executed these presents by their proper officers duly authorized thereto.

Witnesses:

——— ———.

——— ———.

19 (*Supplementary Agreement.*)

Whereas, the Rubber Tire Wheel Company and ——— ——— have entered into a license agreement of even date herewith, which agreement is annexed hereto and forms a part hereof; and

Whereas, the party of the first part has entered into license agreements with the following companies: The Goodyear Tire & Rubber Company, the B. F. Goodrich Company, the Victor Rubber Company, corporations existing under the laws of the state of Ohio; the India Rubber Company, International A. & V. Tire Company, Consolidated Rubber Tire Company, corporations existing under the laws of the state of New Jersey; Morgan & Wright Co., Calumet Tire Rubber Co., both corporations existing under the laws of the state of Illinois; Firestone Tire & Rubber Company, the Diamond Rubber Company, both corporations existing under the laws of the state of West Virginia; the Hartford Rubber Works Company, a corporation existing under the laws of the state of Connecticut; Kokomo Rubber Company, a corporation existing under the laws of the state of Indiana; Pennsylvania Rubber Company, a corporation existing under the laws of the state of Pennsylvania; the Manhattan Rubber Manufacturing Company, a corporation existing under the laws of the state of New York; the Sweet Tire and Rubber Company of Batavia, N. Y.; the Alden Rubber Company, of Barberton, Ohio; and the Stein Double Cushion Tire Company, of Akron, Ohio; and

Whereas, it is desired to definitely state herein the limitation of the right and license granted by the party of the first part to the party of the second part set forth in said license agreement;

Now, therefore, it is understood and agreed that the license granted by the party of the first part to the party of the second part is limited to the manufacture and sale of a quantity of tires not exceeding — in dollars and cents of the aggregate amount manufactured and sold by all the licensees of the party of the first part above enumerated.

In witness whereof, the parties hereto have executed these presents by their proper officers duly authorized thereto.

——— ———.

——— ———.

Witnesses:

——— ———.

——— ———.

(Renewed Agreement.)

This agreement, made this — day of ——, 1903, by and between the Rubber Tire Wheel Company, a corporation organized
20 under the laws of the state of Ohio, party of the first part, and —— ——, party of the second part,

Witnesseth as follows:

Whereas, the party of the second part has entered into a license agreement for the term of one year with the party of the first part under United States Letters Patent No. 554,675, granted February 18, 1896, to Arthur W. Grant, for improvement in vehicle tires; and

Whereas, it is desired by the parties hereto to state the terms on which said license agreement may be renewed at th- expiration of said license period;

Now, therefore, for and in consideration of the sum of one dollar ($1) paid by the party of the second part to the party of the first part, and other good and valuable considerations, the receipt whereof is hereby acknowledged and the mutual covenants existing between the parties hereto, it is hereby agreed as follows:

1. That the party of the second part hereto may renew the said license agreement under said Letters Patent No. 554,675 from year to year if it so elects, on the payment to the party of the first part of the royalty of two per cent (2 per cent) on the net selling price of all tires made under and in accordance with said letters patent; provided, however, that, in case any United States Circuit Court of Appeals shall render a decision holding the said Letters Patent valid. then and in that event the said license may be renewed upon the royalty basis of five per cent (5 per cent) on the net selling price of all such tires; that, so long as the party of the second part shall be licensed to manufacture and sell under said Letters Patent, it will keep true and accurate books of account of all such tires made, sold and delivered by it, and render statements thereof to the party of the first part and pay the royalty provided in its license agreement on or before the 10th day of each calendar month for the tires sold and delivered during the month preceding; that such books of account shall be open at all times during the business hours to the party of the first part.

2. So long as the party of the second part shall be licensed to manufacture and sell tires made under and in accordance with said Letters Patent, the party of the first part will abstain from asserting or prosecuting any claim which — may have for profits or damages by reason of alleged past infringement, and if such party of the second part shall faithfully keep the license agreement with the party of the first part up to the expiration of said Letters Patent, then and in that event the party of the first part will forever
21 waive any and all claims for profits or damages which it may now have against the party of the second part by reason of any alleged past infringement.

In witness whereof, the parties hereto have executed these presents by their proper officers duly authorized thereto.

____ ____.
____ ____.

Witnesses:
____ ____.
____ ____.

(*Licensees' Agreement.*)

This agreement, made this 28th day of August, 1903, by and between the Rubber Tire Wheel Company, a corporation organized under the laws of the state of Ohio, party of the first part, and the Goodyear Tire & Rubber Company, the B. F. Goodrich Company, the Victor Rubber Company, corporations existing under the laws of the state of Ohio; the India Rubber Company, International A. & V. Tire Company, Consolidated Rubber Tire Company, corporations existing under the laws of the state of New Jersey; Morgan & Wright Company, Calumet Tire Rubber Company, both corporations existing under the laws of the state of Illinois; Firestone Tire & Rubber Company, the Diamond Rubber Company, both corporations existing under the laws of the state of West Virginia; the Hartford Rubber Works Company, a corporation existing under the laws of the state of Connecticut; Kokomo Rubber Company, a corporation existing under the laws of the state of Indiana; Pennsylvania Rubber Company, a corporation existing under the laws of the state of Pennsylvania; the Manhattan Rubber Manufacturing Company, a corporation existing under the laws of the state of New York; the Sweet Tire and Rubber Company, of Batavia, N. Y.; the Alden Rubber Company, of Barberton, Ohio; and the Stein Double Cushion Tire Company, of Akron, Ohio, parties of the second part,

Witnesseth as follows:

Whereas, all the parties of the second part hereto have been licensed by the party of the first part to manufacture and sell tires made under and in accordance with Letters Patent No. 554,675, dated February 18, 1896, which Letters Patent are owned by the party of the first part; and

Whereas, it is desired of all the parties hereto that the right and license to manufacture vehicle tires under said Letters Patent granted by the party of the first part shall be exercised to the extent set forth in said license agreements hereto annexed, upon uniform terms and conditions and that the operations of all of said parties of the second part shall be supervised to the said desired end by an impartial administration:

Now, therefore, for and in consideration of the sum of one dollar ($1) paid by each of the parties of the second part to the party
22 of the first part, and other good and valuable considerations, the receipt whereof is hereby acknowledged, and the mutual covenants herein contained, the parties hereto agree as follows:

1. Each and all of the parties of the second part agrees that in case it shall sell and deliver in any month an amount in dollars and

cents over its quota designated in the agreement hereto annexed it will pay to the party of the first part in addition to the regular royalty of 4 per cent of the net selling price specified in the license agreement the additional royalty of 20 per cent on the amount over its said quota.

2. It is hereby agreed that in case any of the parties of the second part shall in any month sell and deliver an amount in dollars and cents less than the quota provided in the agreement hereto annexed, it shall receive as hereinafter provided, a sum equal to 20 per cent on the amount it may be short of its designated quota.

3. Each of the parties of the second part hereto agrees that it will manufacture the vehicle tire herein referred to in two qualities only, a first quality and a second quality, branded by distinguishing marks which shall be filed with the commission hereinafter provided; that the first quality shall be sold at a minimum price of 65 cents per pound and the second quality at a minimum price of 55 cents per pound, terms to be thirty days from date of shipment, less 2 per cent off for cash within ten days from date of shipment, freight to be prepaid or allowed to all points of delivery; that nothing in the way of rebates or counter-considerations of any kind, other than herein provided, shall be given to any of its purchasers; and that no consignments shall be made except to its bona fide branches.

4. The party of the first part hereby agrees that it will employ a Commission of five persons to be designated by the parties of the second part hereto, which commission shall have the supervision of all the relations and transactions between all the parties hereto under this agreement. But it is understood that in any case where a member of said commission or his company shall be directly interested in any question to be decided by said commission, such member may be disqualified and a temporary member appointed in his place if desired and by a majority of the remaining members.

5. The party of the first part hereby agrees that immediately on receipt it will pay over to said commission the entire amount of royalties paid to it by the parties of the second part, less one-half of that portion paid at the rate of four per cent of the net selling price, which it shall retain for itself.

23 6. It is agreed by and between all the parties hereto that the entire amount of royalties so paid over to the commission, as immediately hereinbefore provided, shall be administered by said commission:

(*a*) To pay the expense of said commission, which shall include fee of $20 for each member attending meetings, said expenses, however, to be limited to a total of $1,500 per annum.

(*b*) To pay an auditor or supervisor, whose duty it shall be to supervise all the acts of the parties hereto under this agreement and to audit the books of all the parties of the second part.

(*c*) To pay over to any of the parties of the second part, on or before the last day of each month, a sum or sums of money to which such parties of the second part may be entitled to on account of having sold during the preceding month an amount of tires in dollars and cents less than its quota.

(*d*) To distribute among the licensees who have strictly kept faith (and in this matter the decision of the commission shall be final) the balance of funds in its possession exceeding the sum of $50,000 paying to each such licensee hereunder an amount proportionate to its quota, settlement to be made on or before the last day of each month for the month preceding; but it is understood and agreed that nothing in this agreement shall be construed as obligating the party of the first part to pay any sum of money to any of the parties of the second part, and in case the funds in possession of the commission over and above the amount of $50,000 shall be insufficient to carry out the provisions of this agreement, such deficit shall be borne by all the parties of the second part hereto proportionately to their quotas.

7. It is hereby understood and agreed by all the parties hereto, and each of the parties of the second part agrees for itself, that in case it shall sell any tires at prices less than the prices herein specified, it shall forfeit its right to license rebate above provided to an amount equal to the entire amount involved. Provided, however, that it shall have the right to fill existing contracts according to their terms, in which event copies of such contracts shall be filed with the commission immediately upon the execution of this agreement, such deliveries however to constitute part of its quota.

8. It is understood and agreed, however, that before any payments shall be made to any of the licensees hereunder by the commission as hereinbefore provided, said commission shall ac-
24 cumulate a fund of $50,000 which fund shall be maintained until the expiration of this agreement, when the entire fund shall be distributed amongst the licensees pro rated on amount paid in except as otherwise herein provided.

9. All the parties hereto agree that all contracts and books of account shall be open to the inspection of the auditor or supervisor employed by the commission at any and all times during business hours.

10. It is understood and agreed that the commission shall have power, upon the written consent of a majority of the parties in interest hereto, to purchase tires from any or all of the parties hereto at the prices hereinbefore provided, and to dispose of such tires to the trade at such prices as said commission shall deem to the interest of all the parties hereto, and in making such purchases the commission is hereby authorized to use any money in its possession.

11. It is understood that this agreement shall continue in force only during the license period of one year provided for in the license agreement.

12. It is understood and agreed by and between all the parties that the commission of five persons hereinbefore provided for shall have power to decide any and all questions arising between any of the parties hereto and that the decision of the majority of said commission shall be final, and each and all of the parties hereto agrees to abide by any finding and perform any order which may be made by said commission upon any question affecting it.

13. It is hereby understood and agreed that tires shipped and

used out of the United States shall in no way come under this agreement, except that they shall be reported to the commission every month as provided with respect to tires sold in the United States.

In witness whereof, the parties hereto have executed these presents by their proper officers duly authorized thereto.

——— ———.
——— ———.

Affidavit of F. A. Seiberling.

And to-wit: On the 9th day of September, A. D. 1908, there was filed in the Clerk's Office of the Court aforesaid, a certain Affidavit of F. A. Seiberling, in this cause, which said Affidavit of F. A. Seiberling is clothed in the words and figures following, to-wit:

United States Circuit Court, Southern District of Ohio, Western Division.

25 In Equity. No. 6280.

THE GOODYEAR TIRE & RUBBER COMPANY
vs.
THE RUBBER TIRE WHEEL COMPANY et al.

Affidavit of F. A. Seiberling.

STATE OF OHIO,
County of Summit, ss:

I, F. A. Seiberling, being duly sworn, depose and say that I reside at Akron, Ohio, and am president of The Goodyear Tire & Rubber Company, complainant herein; that it came to my knowledge for the first time on or about July 30th, 1908, that the defendants herein had sued a customer of this complainant, namely, John Doherty, residing in Yonkers, New York, for alleged infringement of the Grant patent 554,675; that said suit had been brought in the United States Circuit Court for the Southern District of New York in July, 1908, and that an ex parte order was obtained on July 24th, 1908, requiring our said customer, John Doherty, to show cause why he should not be enjoined from his alleged infringement of said Grant patent; that our counsel was then away, but was communicated with as soon as practicable, with the result that the hearing of the motion of these defendants to enjoin said Doherty has been set, as I am now advised, for September 15th, 1908, in New York.

I further say that said Doherty has been a customer of complainant herein since December, 1907, and has bought from this complainant rubber tires manufactured at its factory in Akron, Ohio, of the same kind as involved in the original suit between this complainant and these defendants, wherein the said Grant patent was held to be null and void by the Circuit Court of Appeals for the Sixth Circuit; that the rubber tires so far sold by this company to said Doherty

consisted of the tires proper, that is to say, the rubber tires themselves, said Doherty not having as yet ordered from this Company any channel irons or wires to be sent to him by or through this company, having so far confined his orders to the principal feature of the tire equipment, namely, the rubber tires themselves.

That said action by defendants against our said customer has constituted, and is now constituting an interference with and an obstruction to our trade in said rubber tires, which trade we have been pursuing under the rights acquired by said decree; that if defendants are allowed to proceed with said action they will not only drive off this customer, but will intimidate others; and if they succeed in enjoining said Doherty, they will use the same as a precedent
26 under which to attack numberless others of the customers of The Goodyear Tire & Rubber Company; and further, that I believe defendants have so intimidated said Doherty, or have so colluded with him as to induce him to aid and abet them in their said action against him for purposes of procuring an unlawful precedent to use in further intimidating and suing other customers of this complainant, and as evidence, so far obtainable, of said intimidation of or collusion with said Doherty, I attach hereto a copy of the affidavit complainants have induced said Doherty to give them and which they have filed in their said suit against said Doherty. From this affidavit of Doherty it will be seen that he has come to their aid in making up a case against him, but which in fact is a covert attack upon the manufacture and sale of said rubber tires by The Goodyear Tire & Rubber Company. From Doherty's affidavit and that of Edmund S. Roberts it is shown that Doherty let defendants herein have a rubber tire of the Goodyear make. Doherty says in his affidavit he "recognizes the infringing tire in this suit marked Complainant's Exhibit, Defendant's Rubber Tire" and Roberts says "I have recently examined the tire in this suit which was obtained from John Doherty about June 11th, 1908." Roberts says he resides in Yonkers and for eight years has been connected with the Consolidated Rubber Tire Company and has been the manager for five years of this latter Company's branch. This affidavit of Roberts forms a part of the moving papers filed by the defendants herein in their said suit against Doherty. I respectfully show this Court that from my information and from these two affidavits that Roberts is a neighbor of Doherty and arranged with him to become a nominal defendant in said action in New York for purposes of getting a precedent to use against other companies of The Goodyear Tire & Rubber Company. I have stated herein all the material parts of the Roberts affidavit which bear upon the apparent arrangement with Doherty.

I make this affidavit in support of the accompanying motion to restrain the defendants herein from proceeding further with this suit against said Doherty pursuant to the averments and prayers of the bill herein.

F. A. SEIBERLING.

Sworn to and subscribed before me, a Notary Public in and for Summit County, Ohio, this 5th day of September, 1908.

[SEAL.] GEO. W. ROGERS,
Notary Public, Summit County, Ohio.

27 *Restraining Order.*

And to-wit: On the 9th day of September, A. D. 1908, there was filed in the Clerk's Office of said Court, a certain Restraining Order in this cause, which said Restraining Order is clothed in the words and figures following, to-wit:

United States Circuit Court, Southern District of Ohio, Western Division.

No. 6280. In Equity.

THE GOODYEAR TIRE & RUBBER COMPANY
vs.
THE RUBBER TIRE WHEEL COMPANY and CONSOLIDATED RUBBER TIRE COMPANY.

Restraining Order.

On the presentation of the bill of complaint herein and the affidavit of F. A. Seiberling dated September 9, 1908, the Court makes the following order:

(1) That the defendants herein, and each of them, be and are hereby restrained, until the further order of the Court, from prosecuting, bringing to any hearing or proceeding further in any wise with their suit lately filed in the United States Circuit Court for the Southern District of New York against John Doherty, for alleged infringement of the Grant patent 554,675, it now appearing that said John Doherty is a customer of The Goodyear Tire & Rubber Company and has been buying and reselling the rubber tires manufactured by that company at Akron, Ohio; and that this restraining order shall operate also to prevent said defendants, and each of them, from bringing or prosecuting any other suit or suits against any other customer or customers in the United States of complainant herein until the further order of the Court.

(2) That said defendants herein are given until the 19 day of Sept. 1908, to show cause why this restraining order should not be continued in force in the form of an injunction pendente lite pending the final hearing of this cause.

(3) That complainant herein is given until the 25 day of Sept. 1908, within which to file rebutting affidavits in response to the showing to be so made by the defendants.

(4) That the day of hearing for the motion for the injunction pendente lite will be Sept. 29, 1908.

(5) That service hereof be made by serving a copy of this order and of the accompanying affidavit of F. A. Seiberling on the solicitors for defendants within this district.

J. E. SATER,
United States Judge.

September 9, 1908.

28 *Affidavit of F. A. Seaman.*

And to-wit: On the 19th day of October, A. D. 1908, there was filed in the Clerk's Office of the Court aforesaid, a certain Affidavit of F. A. Seaman, in this cause, which said affidavit of F. A. Seaman is clothed in the words and figures following, to-wit:

United States Circuit Court, Southern District of Ohio, Western Division.

In Equity. No. 6280.

THE GOODYEAR TIRE & RUBBER COMPANY, Complainant,
vs.
THE RUBBER TIRE WHEEL COMPANY and CONSOLIDATED RUBBER TIRE COMPANY, Defendants.

Affidavit of F. A. Seaman.

F. A. Seaman being duly sworn says that he is of mature age and resides at Madison N. J., that he is the Secretary of The Consolidated Rubber Tire Company, one of the Defendants herein; and that the Rutherford Rubber Company, having a place of business at 253 West 47th Street, New York City, and the B. F. Goodrich Company, having a place of business at 1625 Broadway, New York City, have not been and are not now licensees under United States Letters patent of Grant No. 554,675.

F. A. SEAMAN.

Sworn to before me this 17th day of September, 1908.

[SEAL.] EMMETT R. SCHRYVER,
Notary Public in and for the County of New York, State of New York.

Amended Answer.

And, to-wit: on the 2nd day of November, A. D., 1908, came the defendants by their solicitors and filed in the clerk's office of the court aforesaid, a certain amended answer in this cause, which said amended answer is clothed in the words and figures following, to-wit:

In the United States Circuit Court, Southern District of Ohio, Western Division.

In Equity. No. 6280.

THE GOODYEAR TIRE & RUBBER COMPANY, Complainant,
vs.
THE RUBBER TIRE WHEEL COMPANY and CONSOLIDATED RUBBER TIRE COMPANY, Defendants.

Amended Answer.

The Answer of The Rubber Tire Wheel Company and Consolidated Rubber Tire Company to the Bill of Complaint of The Goodyear Tire & Rubber *Tire* Company.

29 The defendants now, and at all times, saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the errors or uncertainties or other imperfections in said bill of complaint contained, for answer thereto or unto so much or such parts as said defendants are advised is or are material for them to answer unto, say as follows:

The defendants admit that the Rubber Tire Wheel Company is a corporation organized and existing under the laws of the state of Ohio, and is a citizen of said state and inhabitant of the Southern District of Ohio, Western Division, and has an office at Springfield, Ohio, and that Consolidated Rubber Tire Company is a corporation organized and existing under the laws of the state of New Jersey and is a citizen and inhabitant of said state, and has offices and places of business at Cincinnati and Akron in said state of Ohio.

The defendants further answering admit that they brought suit against said complainant for infringement of letters patent No. 554,675, dated February 18, 1896, and that said patent was held to be null and void by the U. S. Circuit Court of Appeals for the Sixth Circuit, and the bill of complaint against the said complainant herein dismissed, as set forth in the bill of complaint herein.

The defendants further answering admits that they brought suit against the Banner Buggy Company and Russell E. Gardner, of St. Louis, Mo., for infringement of said letters patent No. 554,675, but deny that said suit was brought against the said Banner Buggy Company and Russell E. Gardner, as customers of the complainant herein, or for infringement of any rubber tire manufactured and sold by said complainant herein to the said Banner Buggy Company and Russell E. Gardner; and they deny that the said suit against the Banner Buggy Company and Russell E. Gardner is an unlawful interference with the complainant's trade with said parties or will create an irreparable loss to said complainant or is a menace to its trade with others. On the contrary the defendants aver that the said suit against the Banner Buggy Company and Russell E. Gardner was for infringement for the use by them of a

rubber tire made by the Stein Double Tire Cushion Company of Akron, Ohio; which concern is no way connected with the said complainant herein.

The defendants further answering state that since the decision of the U. S. Circuit Court of Appeals for the Sixth Circuit, dismissing the bill of complaint against the complainant herein, the said patent No. 554,675 has been sustained and held to be infringed by
30 the U. S. Circuit Court of Appeals for the Second Circuit; that in February, 1905, the defendants herein brought suit in the Circuit Court of the United States for the Southern District of New York against the Firestone Tire & Rubber Company for infringement and violation of their rights *of* the defendants under said letters patent; that said Firestone Tire & Rubber Company defended said suit and therein denied the validity of said patent, and also the infringement thereof, and denied the title of complainants (defendants herein) to said letters patent, and said cause came on to be heard upon pleadings and proofs before Hon. James P. Platt District Judge, May 21st, 1906, and was argued by counsel for the respective parties, and on August 20th, 1906, said Circuit Court ordered a decree for these defendants, adjudging said patent and both claims thereof to be valid, and that these defendants were the owners thereof, and that said Firestone Tire & Rubber Company infringed the same, and decreed an accounting for profits and damages. From said decree said Firestone Tire & Rubber Company appealed to the United States Circuit Court of Appeals for the Second Circuit, and said appeal came on to be heard upon the pleadings and proofs January 7th, 1907, before Judges Lacombe, Townsend and Coxe, and was then argued upon the pleadings and proofs and on February 1st, 1907, said Circuit Court of Appeals ordered a decree for defendants herein, affirming the decree of said Circuit Court and affirming the validity of said letters patent No. 554,675, and both claims thereof, and adjudging the same to be infringed by the Firestone Tire & Rubber Company.

Defendants further answering deny that they, or either of them, have threatened the Goodyear Tire & Rubber Company or its customers with suit on the said *grand* patent, or that the defendants have had any notice or information of any kind that the Banner Buggy Company or Russell E. Gardner were customers of complainant, but defendants do know and aver the fact to be that in the trade a carriage manufacturer often handles and sells different makes of rubber tires, and that the practice in trade is to purchase rubber, namely: one element of a combination of the Grant patent, from rubber companies and apply this rubber themselves by means of special machinery, or have it applied for them by some blacksmith or machine company, to channel irons furnished by the customer of said carriage company or purchased direct from some steel or rubber company, and that a large part of the rubber tire business of the carriage manufacturer is often done by applying the rubber by means of two independent retaining wires to their own make
31 of wheels and to wheels furnished them having different makes of channel irons, but all of that peculiar shaped rim

which co-operates with the two independent retaining wires and the rubber to form the Grant patented construction; and that comparatively the smallest part of the business done by rubber companies is in furnishing the complete article, namely: the rubber tires assembled in the channel iron, for their sale or use by reason of the fact that the carriage manufacturers thereafter assemble the parts together or have them assembled together to form the rubber-tired vehicle wheel; that as a matter of fact it often happens that the carriage manufacturer applies complainant's rubber to channel irons previously furnished by the said defendant and vice versa, defendant's rubber on Goodyear channel iron, and that it is often impossible to tell from the tire itself whether the channel iron was furnished by the Goodyear Company, or the Stein Company, or some other company of the large number of competing concerns.

Defendants admit that Alvarez & Co., are an established firm in Havana, Cuba, and are dealers in carriages and saddlery, at the address stated in the bill of complaint as amended, defendants admit that said Alvarez & Co. have been buying rubber from said complainant for use in rubber tires, but aver, on information and belief that said Alvarez & Co. have been buying rubber also from various other rubber concerns and has also been buying the channel iron and wires for said rubber tires from various sources other than complainant; defendants admit that suit was bought against said Alvarez & Co. for infringement, but aver that said suit was instituted under defendant's Cuban patent covering the construction of such rubber tires, by H. F. Manning defendant's exclusive licensee.

That the laws of the Republic of Cuba provides for registration of foreign patents at Havana, Cuba, and said Republic undertakes under and by virtue of its said laws to protect the owners of registered patents against all violations or infringements thereof. That said Cuban patent to Grant was a valid and existing grant recognized by said Republic of Cuba and same was being enforced as a Cuban patent.

Defendants further answering say that they are not informed as to whether or not the complainant has by a large or any expenditure of money and effort, built up an extensive and profitable business in solid rubber tires for vehicles and therefore deny the same; that they are not informed as to whether or not any of complainant's customers are withholding the sending in of orders to
32 the complainant on account of any alleged acts of the defendants and therefore deny the same; they are not informed as to whether or not the complainant has been compelled to offer indemnifying bonds and guarantees to its customers and buyers generally by reason of any alleged threats of suits or suit brought by defendants against them, and therefore denies the same; and defendants further deny that the complainant has suffered any loss or injury to its business in rubber tires by reason of any acts of these defendants.

Wherefore these defendants, having fully answered to the said bill of complaint in so far as they are advised the same is material and necessary to be answered unto, deny that the said plaintiff is

entitled to the relief or any part thereof in the said bill of complaint demanded, or any relief whatsoever; pray the same advantage of their aforesaid answer as if they had pleaded and demurred to said bill of complaint, and pray to be hence dismissed with their reasonable charges in this behalf most wrongfully sustained.

THE RUBBER TIRE WHEEL CO.
CONSOLIDATED RUBBER TIRE CO.

PAUL A. STALEY,
BORDER BOWMAN,
Of Counsel.

Affidavit of George M. Stadelman.

And to-wit: on the 19th day of November, A. D., 1908, there was filed in the clerk's office of the court aforesaid a certain affidavit of George M. Stadelman, in this cause, which said affidavit of George M. Stadelman is clothed in the words and figures following, to-wit:

United States Circuit Court, Northern District of Ohio, Western Division.

In Equity. No. 6280.

THE GOODYEAR TIRE & RUBBER *Rubber* COMPANY
vs.
THE RUBBER TIRE WHEEL COMPANY et al.

Affidavit of George M. Stadelman.

STATE OF NEW YORK,
County of New York, ss:

I, George M. Stadelman, being duly sworn, depose and say that I reside in Akron, Ohio, and that in company with Charles Measure, manager of the New York office of the Goodyear Tire & Rubber Company, I called upon John Doherty at his place of business, 300 West Forty-eighth street, New York City. Said Doherty admitted to me that he was the same John Doherty recently sued by
33 the defendants herein for alleged infringement of the Grant Rubber Tire Patent, because of his purchase and sale of the Goodyear Tire & Rubber Company's tires made at that company's factory at Akron, Ohio.

The said John Doherty told Mr. Measure and me that prior to May 28th, 1908, a man unknown to him called at his shop at the above address and told him that he wished him to equip with rubber tire a carriage wheel he, the said caller, had brought to the said shop. The said caller informed the said Doherty that the said

wheel must be equipped with Goodyear Wing tire made by the Goodyear Tire & Rubber Company. Thereupon the said Doherty purchased certain tire of that description from the New York office of the Goodyear Tire & Rubber Company.

The said Doherty informed me that he knew well Mr. Roberts, the New York manager of the Consolidated Rubber Tire Company and that just before he began to fit the said rubber to the said wheel, the said Roberts directed the said Doherty to buy the necessary wire and channel therefor but under no circumstances to buy it from the said Goodyear Tire & Rubber Company. Roberts expressly directed that it must be bought from some concern other than the said the Goodyear Tire & Rubber Company. Thereupon the said Doherty purchased the said wire from the B. F. Goodrich Company and the said channel from the Rutherford Rubber Company.

The said Doherty further told me that when he was in his shop fitting the said rubber to the said wheel, the said Roberts called and asked him (Doherty) to place a mark on the said tire, so that he (Doherty) could readily identify the said tire when called as a witness in court; thereupon the said Doherty made a mark for identification as requested.

The said Doherty further told me that the said Manager Roberts informed him that the bill for his services should be sent to the Consolidated Rubber Tire Company. This bill was for the time Doherty had spent in the interviews with the said Roberts and in making the said purchases, and also included the expense to which he had been put. The highest charge the said Doherty ever had made for similar work, including a commission for the one bringing the customer, had been $16.00, but the usual charge which he made for such work was much less than $16.00. He stated that knowing that the work was done in connection with a law suit, he made an extra charge, as he thought that he could easily get that amount. As requested the said Doherty sent the said Con-
34 solidated Rubber Tire Company a bill for $20.00 "for services rendered." A short time thereafter the said Doherty received a notice from the Consolidated Rubber Tire Company to the effect that they had credited the said Doherty on his account with the amount of the said bill, namely $20.00. In support of his statement the said Doherty showed me a statement from the Consolidated Rubber Tire Company on their bill head made out to the said Doherty, on which the said Doherty was credited with $20.00 under date of October 16th, 1908.

[SEAL.] GEORGE M. STADELMAN.

Subecribed and sworn to before me a notary public, New York county, New York state, this 9th day of November, 1908.

PLINY W. WILLIAMS,
Notary Public, New York.

Affidavit of F. A. Seiberling.

And to-wit: on the 19th day of November, A. D., 1908, there was filed in the clerk's office of the court aforesaid, a certain affidavit of F. A. Seiberling, in this cause, which said affidavit of F. A. Seiberling is clothed in the words and figures following, to-wit:

United States Circuit Court, Southern District of Ohio, Western Division.

In Equity. No. 6280.

THE GOODYEAR TIRE & RUBBER COMPANY
vs.
THE RUBBER TIRE WHEEL COMPANY et al.

Affidavit of F. A. Seiberling.

STATE OF OHIO,
County of Summit, ss:

I, Frank A. Seiberling, being duly sworn, depose and say that I am president of the complainant company herein; that as to the affidavit of Mr. F. A. Seaman of October 17th, 1908, in which he introduces a copy of an agreement, which operated for about a year, between August, 1903, and August, 1904, I would state as an explanatory, that just prior to these agreements the prices of rubber tires, by reason of the number of manufacturers engaged in making such tires, in competition, had become so low that it was almost impossible to make a fair return on the investment of the different companies; that those who had defeated the Grant patent, as well as those who had not been sued, were anxious to make some arrangement to overcome that condition as to prices, and that the patent, while good as to some of the companies, was unavailing as
35 to them for licenses with a price agreement, unless those who had defeated the patent would enter into the agreements also. Accordingly this company became a party to the association and license arrangements covered by said agreements, with the express stipulations contained in the agreements that no rights previously acquired should be prejudiced, and that the legal status of the company should remain unaffected in every respect. These reservations are in the following clauses, taken from said contracts:

"III. It is hereby mutually agreed by and between the parties hereto that this license agreement shall in no way prejudice either of the parties thereto, but that the legal status of the parties existing prior to the execution of this agreement shall remain unaffected by this agreement in every respect."

The license agreement also contained the following acknowledgment by the licensor, one of the defendants herein, of the decree of the Circuit Court of Appeals for the Sixth Circuit, finding the Grant patent void, namely:

"And the party of the first part hereby agrees that during the existence of this agreement it will vigorously prosecute any and all *infringers* of said letters patent, except such as may be committed in the Sixth Circuit of the United States Circuit Court of Appeals.

I further say that the custom pursued with said John Doherty is exactly the same pursued with the other United States customers of this company before, during and since the former suit between this company and the defendants herein, resulting in the decree of May 6th, 1902; it being also true that the customers of all the rubber tire companies buy some of their wire and channel iron from outside dealers in these articles.

FRANK A. SEIBERLING.

Sworn to and subscribed before me, a notary public in and for Summit county, Ohio, this 3rd day of November, 1908.

[SEAL.]

GEO. W. ROGERS,
Notary Public, Summit County, Ohio.

Affidavit of Charles Measure.

And, to-wit: on the 19th day of November, A. D., 1908, there was filed in the clerk's office of the court aforesaid, certain affidavits of Charles Measure, which said affidavits of Charles Measure are clothed in the words and figures following, to-wit:

36 United States Circuit Court, Southern District of Ohio, Western Division.

In Equity. No. 6280.

THE GOODYEAR TIRE & RUBBER COMPANY
vs.
THE RUBBER TIRE WHEEL COMPANY et al.

Affidavit of Charles Measure.

STATE AND COUNTY OF NEW YORK, *ss:*

I, Charles Measure, being duly sworn, depose and say that I reside in the city of New York and am manager of the New York branch office of the Goodyear Tire & Rubber Company and am familiar with the trade and customers of said company in this vicinity. I personally know John Doherty, whose place of business is at 300 W. 48th street, New York City. He is the customer of the Goodyear Tire & Rubber Company who was sued by the defendants in this case in the United States Circuit Court for the Southern District of New York, for alleged infringement of the Grant rubber tire patent, 554,675. I have had occasion to go to his said place of business and learned that in a small way that he is in the business of applying rubber tires to vehicle wheels, sometimes new channel

irons to the wheels and then the tires in the channel irons, and sometimes he only applies new tires to old channel irons already on the wheels. He has a small room in the basement of the above address and has no machinery except a machine furnished him by the Consolidated Rubber Tire Company for applying the rubber to the channel irons, that is, a machine such as that company supplies to its customers for use in securing the strips of rubber in the channel iron, by drawing the wires tight and uniting their ends. He has no means of applying new channel irons to wheels, but usually goes to a nearby rubber company known as the Rutherford Rubber Company, at 253 W. 47th street, to have that done. In fact, his business is so small that he carries but little, if any, rubber at a time and usually purchases rubber as he needs it, having from time to time made such purchases from the Goodyear Tire & Rubber Company.

And further affiant saith not.

CHARLES MEASURE.

37 Sworn to and subscribed before me, a notary public in and for New York county, New York, this 2nd day of November, 1908.

[SEAL.] PLINY W. WILLIAMSON,
Notary Public, New York County, New York.

Affidavit of Charles Measure.

United States Circuit Court, Southern District of Ohio, Western Division.

No. 6280. In Equity.

THE GOODYEAR TIRE & RUBBER COMPANY
vs.
THE RUBBER TIRE WHEEL COMPANY et al.

Affidavit of Charles Measure.

STATE OF NEW YORK,
County of New York, ss:

I, Charles Measure, being duly sworn, depose and say that I reside in the City of New York, and am manager of the New York Branch Office of The Goodyear Tire & Rubber Company, complainant herein. I personally know John Doherty, whose place of business is at 300 West 48th Street, New York City: to-day I called upon the said John Doherty at his said place of business, and sold to him some pieces of wing Rubber made by The Goodyear Tire & Rubber Company, and some pieces of soft wire, used to fit the said Rubber to Carriage or Buggy Wheels. The said purchase amounted in all to Fifteen Dollars and Sixty-five Cents ($15.65), and the exact quan-

tity of the goods sold is more particularly shown by the annexed copy of invoice of the said goods, which is hereto attached, and made a part hereof and which is a carbon copy of the original invoice delivered to the said John Doherty and is an exact description of the said goods sold to him.

CHARLES MEASURE.

Sworn to and subscribed before me, a Notary Public in and for New York County, New York, this third day of November, 1908.

[SEAL.] PLINY W. WILLIAMSON,
Notary Public, New York County, New York.

Claims for Damages or Shortage must be made on receipt of Goods.

The Goodyear Rubber Tire Co. of New York.

Terms: 30 Days Net.
Discount of 2 per cent. allowed.

If paid by —— John Doherty.
Via —— 300 West 46th St.
N. Y. City.

No. ——.
Branch.
New York.
E-111606.
Dept. No. 4.

38 The above terms are abrogated and this invoice becomes due and payable on demand, at option of The Goodyear Tire & Rubber Co., should any suit be instituted or credit of payor become impaired from any cause whatever.

Our Order No. —. F. O. No. —. Your Order No. —.

Quantity.	Size.	Weight.	Article.	Price.	Total.
4 Pcs.	1½ in.	43	Wing Rubber	.35	15.05
12 Pcs.	No. 9	12	Soft Wire	.05	.60
					15.65

Send all remittances to Akron Ohio, in New York, Chicago or St. Louis Exchange.

Subject to sight draft on third day after due, with exchange without further notice. Positively no cash discount allowed after date stated.

United States Circuit Court, Northern District of Ohio, Western Division.

In Equity. No. 6280.

THE GOODYEAR TIRE & RUBBER COMPANY
vs.
THE RUBBER TIRE WHEEL COMPANY et al.

Affidavit of Charles Measure.

STATE OF NEW YORK,
County of New York, ss:

I, Charles Measure, being duly sworn depose and say that I reside in the City of New York, and that I am Manager of the New York Office of The Goodyear Tire & Rubber Company. I am personally acquainted with John Doherty, recently sued by the defendants herein for alleged infringement of the Grant Rubber Tire Patent 554,675, because of his purchase and sale of The Goodyear Tire & Rubber Company's tires, made at that Company's factory at Akron, Ohio.

On May 28th, 1908, our New York Agency sold to the said Doherty a bill of goods consisting of 13 feet 3 inches of Wing rubber of the kind which is used as rubber tire for a carriage or buggy wheel. Today Mr. George M. Stadelman and I called upon the said Doherty and talked to him concerning the said transaction; I also talked to him on November 2nd, 1908. On each occasion he informed me that just before he purchased the said rubber a man unknown to him called at his shop and told him that he wished him to equip with rubber tire a carriage wheel he, the said
39 customer, had brought to the said shop. The said customer informed the said Doherty that he must have a Goodyear Wing tire made by The Goodyear Tire & Rubber Company. Thereupon the said Doherty made the said purchase as aforesaid. Before he commenced to fit or apply the said tire to the said wheel the New York Manager of The Consolidated Rubber Tire Company, Mr. Roberts, who was well known to the said Doherty, called on the said Doherty and directed the said Doherty to buy the necessary wire and channel to fit the said tire to wheel, but he, Roberts, the said Manager of the Consolidated Rubber Tire Company, clearly and explicitly directed the said Doherty not to purchase the said wire and the said channel from the said Goodyear Tire & Rubber Company, or from any of its agents or branches, but from any other concern; that thereupon the said Doherty purchased the said wire from the B. F. Goodrich Company and the said channel from The Rutherford Rubber Company.

The said Doherty further told me that thereafter when he was engaged in his said shop in fitting the said tire, Mr. Roberts, said Manager for the Consolidated Rubber Tire Company called at his said shop and asked the said Doherty to place a mark on the said

tire, so that he the said Doherty could readily identify the said tire when called as a witness in Court, and that thereupon the said Doherty made a mark for identification as requested. Thereafter the said Doherty sent a bill to the said Manager, Mr. Roberts, for $20.00, which he, the said Doherty, was authorized to charge the said Consolidated Rubber Tire Company for his time and services in carrying out the said instructions of the said Manager as above set forth and in holding the said interviews with the said representatives of the Consolidated Rubber Tire Company. The said Bill for $20.00 also included his expenses amounting to $13.00. The said Doherty stated to me that a short time thereafter he received a notice from the Consolidated Rubber Tire Company stating that they had credited the said Doherty with the amount of the said Bill, namely, $20.00 on account of the said Doherty which he owed the said Consolidated Rubber Tire Company, and in fact I personally saw a written statement issued by the said Consolidated Rubber Tire Company on which the said $20.00 appeared as a credit on account of said Doherty under date of October 16th, 1908.

CHARLES MEASURE.

40 Subscribed and sworn to before me a Notary Public, New York County, New York State, this 9th day of November, 1908.

[SEAL.] PLINY W. WILLIAMSON,
Notary Public, New York.

Memo.

And on the 11th day of October, A. D., 1909, there was filed in the Clerk's Office of said Court, in said Cause, a certain memo. of Judge Sater, clothed in words and figures following, to-wit:—

In the Circuit Court of the United States, Southern District of Ohio, Western Division.

In Equity. No. 6280.

THE GOODYEAR TIRE & RUBBER COMPANY, Complainant,
vs.
THE RUBBER TIRE WHEEL COMPANY, Defendants.

On Application for Temporary Injunction Pendente Lite.

SATER, *District Judge:*

This case is before me on an application for a temporary injunction pendente lite and is one of first impression. And examination of the facts on which the opinion in Kessler vs. Eldred, 206, U. S., 285, was based, and on the facts involved in the present case, will be serviceable in reaching a conclusion.

The prior litigation of which Kessler vs. Eldred was the outgrowth, discloses that Eldred began a suit in the Circuit Court in the District of Indiana, for infringement of the Chambers patent. The decree having gone against him, he appealed to the Circuit Court of Appeals of the Seventh Circuit, where again, the judgment was adverse to him. Eldred vs. Kessler, 106 Fed. Rep., 509. The decree of that Court still remains in full force. The Chambers patent was not found void. The invention was held to be valid but not of a primary character. The letters patent and the claims therein set out were given a narrow construction and were held to be limited by the prior art to mere improvements on prior devices which accomplished the same general result. It is to be noted that the Chambers patent was not held void. Subsequently Eldred brought a suit in the Northern District of New York, against a vendor of a device similar to that of Kessler, but not of his make. On appeal, the Circuit Court of Appeals of the Second Circuit, Eldred vs. Kirkland, 130 Fed. Rep., 342, held the Chambers patent to be infringed. Thus again was its validity established. Thereafter Eldred sued, in the Western District of New York, a
41 user of Kessler's patented device which had been held by the Circuit Court of Appeals of the Seventh Circuit not to infringe the Chambers patent, whereupon Kessler assumed the defense of his New York customer, and also brought suit in the Northern District of Illinois to enjoin Eldred from prosecuting any suit in any court of the United States against any one for alleged infringement of the Chambers patent, who might be the vendor, vendee or user of any electric cigar lighter manufactured by Kessler and identical with the one in evidence in the suit decided in favor of Kessler and against Eldred in the Circuit Court of Appeals of the Seventh Circuit. Certain interrogatories were certified to the Supreme Court, the answers to which are founded in the opinion of Mr. Justice Moody, Kessler vs. Eldred.

The Rubber Tire Wheel Company and Consolidated Rubber Company filed a suit in the Circuit Court in the Northern District of Ohio, against The Goodyear Tire & Rubber Company, claiming that the latter's patented tire and device infringed the Grant patent No. 554,675. On appeal to the Circuit Court of Appeals of this Circuit, it was held (Lurton, J.) that the Grant patent was void for want of patentable invention. Goodyear Tire & Rubber Co. vs. Rubber Tire Wheel Co., 116 Fed. Rep., 363. A petition for a writ of certiorari to review the decision of the Circuit Court of Appeals was denied. 187 U. S., 641. Attention is directed to the fact that the Grant patent was by the Appellate Court of this Circuit held void. Subsequently the Grant patent was held valid by the Circuit Court of Appeals of the Second Circuit. Consolidated Rubber Tire Co. vs. Diamond Rubber Co., 162 Fed. Rep. 892; Consolidated Rubber Tire Co. vs. Firestone Tire & Rubber Co., 151 Fed. Rep. 237. The Grant patent has been the subject of litigation in courts other than those above named, some of which have sustained the others have denied its validity.

In July, 1908, the defendants in this case, who were the com-

plainants in the original suit brought in the Northern District of Ohio, filed a bill in one of the Federal Courts sitting in New York, to restrain and enjoin one Doherty from infringing the Grant patent. Doherty is a small dealer, of small means, and has been a customer of the complainant since December, 1907. The affidavit shows him to have stated that some persons unknown to him, desiring to equip a carriage wheel with a rubber tire, directed that the tire must be of the complainant's manufacture, and Doherty thereupon purchased such a tire. Thereafter Roberts, New York manager of the Consolidated Tire Company, before the fitting of a rubber to the wheel, directed him to buy the necessary wiring
42 and steel channel of some one other than the complainant or any of its agents or branch houses. He thereupon purchased the wire of B. F. Goodrich, and the steel channel of The Rutherford Rubber Company. He says he was further directed by Roberts to mark the wheel to which he applied the tire so he could identify it, and to send his bill for services rendered to the company of which Roberts was the New York Manager. Doherty did this and credit was given him on his account by such company. The evidence is undisputed that Doherty purchased his materials as above stated and fitted them to the carriage wheel. The statements attributed to him are not denied.

The Appellate Court of this Circuit having declared the Grant patent void, each and every claim and each and every element of every claim set forth in it must be regarded as conferring no right whatever on the defendants, or either of them, as against the complainant. The Grant letters are not, in consequence of such decree, susceptible of infringement by the complainant, by its device, or by any part or parcel thereof. As against the defendants, the complainant may use its tire, or any part thereof, in such manner as it chooses, because they have no right under the Grant patent which complainant may not freely exercise. The court's decree was a withdrawal from defendants, as against complainant, of all protection and exclusive rights claimed by them under that patent, and unalterably fixed the rights of the parties to this, as well as to that, suit.

Have the defendants, by bringing suits against one of complainant's customers, violated its rights? If they may maintain one such suit, they may maintain others, and thus by harassing complainant's customers, diminish its sales, as no one will care to buy complainant's device, or any part of it, if in so doing he buys a law-suit. The complainant's right is that its customers shall not be disturbed. Its right to use its device as an entirety, or the elements thereof singly, without molestation, would be of little value if its customers may not enjoy the same privilege. If the complainant may vend, or use, the whole or any part of its patented device, as it may do as against the void patent, regardless of any claims asserted by defendants, it would seem logically to follow that the defendants may be enjoined from interfering with the business of the complainant by bringing suit based on such void patent against complainant's customers, whether the business conducted with those

customers is the vending to them of the whole of the patented tire, or some one or more of the elements which enter into it. Goodyear Tire & Rubber Co. vs. Rubber Tire Wheel Co., 164 Fed.
43 Rep., 869. The rights of the parties, as fixed by final judgment of the Appellate Court of this Circuit, must be recognized by them in every way wherever that judgment is entitled to respect. Having the right to vend its product as an entirety, or in parts, without hindrance from defendants, it is not required to sit idly by witnessing the destruction of its trade with no recourse save an action for damages. Whether the complainant has sold this or that element of the device described in its letter patent with the intent and purpose that such element should be used in combination with other elements covered by the Grant patent, is immaterial, because as against the complainant there is no Grant patent. In view of the facts disclosed, the decisions to which this court must give heed, and the form of decree sanctioned in Consolidated Rubber Tire Co. vs. Diamond Rubber Co., 162 Fed. Rep., 892, the complainant is entitled in my judgment to a temporary injunction pendente lite, enjoining defendants from instituting and maintaining any action against Doherty or any other of complainant's customers who buy from it and handle, use or sell either its patented device as an entirety, or any of the parts of such device, whether the rubber tires, wiring, or steel channels.

An order temporarily enjoining the defendants may be taken in accordance with the foregoing.

Order.

And on the 23rd day of November, A. D., 1909, an order was made on the journal of said court, in this cause, which said order is clothed in words and figures following, to-wit:

No. 6280.

THE GOODYEAR TIRE & RUBBER COMPANY
vs.
THE RUBBER TIRE WHEEL COMPANY and CONSOLIDATED RUBBER TIRE COMPANY.

Order for Injunction.

This cause coming on to be heard on complainant's motion for an injunction pendente lite to restrain defendants from prosecuting suits against complainant's customers and the same having been argued before the court by counsel for the respective parties, and the court having taken the same under advisement, now orders that said motion be, and is hereby, granted, and that an injunction pendente lite issue as prayed for in the bill of complaint.
44

J. E. SATER,
United States Judge.

Nov. 23, 1909.

Order.

And on the 23rd of November, A. D., 1909, an order was made on the Journal of said Court, in this cause, which said order is clothed in the words and figures following, to-wit:

No. 6280. In Equity.

THE GOODYEAR TIRE & RUBBER COMPANY
vs.
THE RUBBER TIRE WHEEL COMPANY and CONSOLIDATED RUBBER TIRE COMPANY.

Preliminary Injunction.

This cause coming on to be heard on complainant's motion for an injunction pendente lite to restrain defendants from instituting and prosecuting suits against complainant's customers, and the court having heard counsel for both parties in argument and having duly considered said motion and all the moving papers and the record herein, orders, adjudges and decrees as follows:

(1) That the defendants, The Rubber Tire Wheel Company and the Consolidated Rubber Tire Company, and each of them, their attorneys, agents and representatives be, and are hereby, enjoined and restrained, pendente lite, from prosecuting the suit heretofore instituted by defendants against John Doherty, a customer of complainant, in the United States Circuit Court for the Southern District of New York.

(2) That defendants, The Rubber Tire Wheel Company and the Consolidated Rubber Tire Company, and each of them, their attorneys, agents and representatives be, and are hereby, likewise enjoined and restrained pendente lite from instituting, maintaining or prosecuting any action in any court of the United States, based on alleged infringement of letters patent No. 554,675, issued February 18th, 1896, to one A. W. Grant, against any person, firm or corporation for dealing in, buying, selling or using any of complainant's solid rubber tires or any of the component parts thereof.

(3) The defendants, The Rubber Tire Wheel Company and the Consolidated Rubber Tire Company, and each of them, their attorneys, agents and representatives, be, and are hereby, enjoined and restrained from interfering with the business of complainant by threatening to bring such suits based on said Grant patent against complainant's customers, whether the business conducted with those customers is the vending to them of the whole of
45 complainant's tire or some one or more of the elements which enter into it.

J. E. SATER,
United States Judge.

Nov. 23, 1909.

Petition for Appeal.

And on the 22nd day of December, A. D. 1909, there was filed in the Clerk's Office of said Court, a certain Petition for Appeal, which said Petition is clothed in words and figures following, to-wit:

United States Circuit Court, Southern District of Ohio, Western Division.

No. 6280. In Equity.

THE GOODYEAR TIRE & RUBBER COMPANY, Complainant,
vs.
THE RUBBER TIRE WHEEL COMPANY and CONSOLIDATED RUBBER TIRE COMPANY, Defendants.

Petition for Appeal.

The above named defendants, The Rubber Tire Wheel Company and the Consolidated Rubber Tire Company, conceiving themselves aggrieved by the decree and order for preliminary injunction entered herein this 23rd day of November, 1909, hereby appeal from said decree and order to the United States Circuit Court of Appeals for the Sixth Circuit, and pray that this appeal may be allowed and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Sixth Circuit, together with such exhibits as they have been offered.

THE RUBBER TIRE WHEEL CO. ET AL.,
By STALEY & BOWMAN,
Solicitors and Counsel for Def't.

——— ———,
——— ———,
Of Counsel.

Assignment of Errors.

And also on the 22nd day of December, A. D., 1909, there was filed in the Clerk's Office of said Court, a certain Assignment of Errors, clothed in words and figures following, to-wit:

United States Circuit Court, Southern District of Ohio, Western Division.

46 No. 6280. In Equity.

THE GOODYEAR TIRE & RUBBER COMPANY, Complainant,
vs.
THE RUBBER TIRE WHEEL COMPANY and CONSOLIDATED RUBBER TIRE COMPANY, Defendants.

Assignment of Errors by the Defendants, The Rubber Tire Wheel Co. and Consolidated Rubber Tire Co.

Now on the 24th day of November, 1909, came defendants, The Rubber Tire Wheel Company and Consolidated Rubber Tire Company by their solicitors and say that the decree in the above entitled cause of date November 23rd, 1909, is erroneous and against the just rights of the defendants in the following particulars:

First. The court erred in entering any preliminary injunction against these defendants or either of them since no proper showing was made to warrant such order.

Second. The Circuit Court erred in entering an injunction pendente lite restraining defendants from instituting or prosecuting any action based on infringement for the dealing in, buying, selling or using any of the component parts of complainant's tire since defendants' rights are thereby jeopardized.

Third. Said court erred in enjoining defendants against prosecuting the user or seller of any of the component parts of the Goodyear rubber tires since defendants are thereby enjoined from prosecuting suits against users or customers of other manufacturers if said users or customers have purchased any one of the elements constituting rubber tires of complainant.

Fourth. Said court erred in entering a decree against defendants from prosecuting the suit instituted against John Doherty since it appeared that the said Doherty had not purchased rubber tires of complainant, but had in fact purchased only one element of the combination of elements.

Fifth. Said Court erred in entering a decree against defendants from prosecuting the suit instituted against John Doherty since it appears that the said Doherty had purchased the channel iron and wire of other manufacturers and thereafter assembled the elements together in infringement of letters patent 554,675, owned by defendants and in violation of defendants' right.

THE RUBBER TIRE WHEEL CO. ET AL.,
STALEY & BOWMAN, *Att'ys.*

47 *Entry Allowing Appeal.*

10–328.

And on the 22nd day of December, A. D., 1909, an Entry was made on the Journal of said Court, in this cause, which said Entry is clothed in words and figures following, to-wit:

No. 6280.

THE GOODYEAR TIRE & RUBBER COMPANY
vs.
THE RUBBER TIRE WHEEL Co. and CONSOLIDATED TIRE Co.

This day came the defendant and presented its petition for an appeal to the United States Circuit Court of Appeals for the Sixth Circuit, and an Assignment of Errors accompanying the same, which Petition, upon consideration of the Court is hereby allowed upon the filing of a Bond in the sum of Five Hundred ($500.00) Dollars, with good and sufficient security to be approved by the Court.

Bond.

And also on the 22nd day of December, A. D., 1909, there was filed in the clerk's office of said court, a certain bond, which said bond is clothed in the words and figures following, to-wit:

Bond.

United States Circuit Court, Southern District of Ohio, Western Division.

In Equity. No. 6280.

THE GOODYEAR TIRE & RUBBER COMPANY, Complainant,
vs.
THE RUBBER TIRE WHEEL COMPANY and CONSOLIDATED RUBBER TIRE COMPANY, Defendants.

Know all men by these presents, that we, Consolidated Rubber Tire Company, of New York City, a corporation of the state of New York, and the Rubber Tire Wheel Company, of Springfield, Ohio, a corporation of Ohio, as principals and the Bankers Surety Company of Cleveland, Ohio, as sureties, are held and firmly bound unto the complainant, the Goodyear Tire & Rubber Company, in the sum of five hundred dollars to be paid to the said the Goodyear *Rubber* Tire & Rubber Company, and for the payment of which well and truly to be made, we bind ourselves and each of us, our and

each of our successors, heirs, executors and administrators, jointly and severally, firmly by these presents.

48 Sealed with our seals and dated the 27th day of November, 1909.

Whereas, the above named Consolidated Rubber Tire Company and the Rubber Tire Wheel Company has prosecuted an appeal to the United States Circuit Court of Appeals for the Sixth Circuit to reverse the decree for preliminary injunction granted in the above entitled suit in the Circuit Court of the United States for the Southern District of Ohio, Western Division, in equity, on the 23rd day of November, 1909.

Now, therefore, the condition of this obligation is such that if the above named companies, Consolidated Rubber Tire Company and the Rubber Tire Wheel Company shall prosecute their said appeal to effect and answer all damages and costs if they fail to make such appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

—— ——,
By —— ——;
THE RUBBER TIRE WHEEL CO.,
By PAUL A. STALEY, *Vice Pres't,*
Principals.
THE BANKERS SURETY CO.,
JOS. P. GOODWIN, *Attorney,*
[SEAL.] By OLIVER H. MILLER, *Agent,*
Sureties.

The foregoing bond is hereby approved.

J. E. SATER,
Dist. Judge, Sitting as Circuit Judge.

Præcipe for Transcript.

And on the 5th day of January, A. D., 1910, there was filed in the clerk's office of said court a certain præcipe, which said præcipe is clothed in words and figures following, to-wit:

United States Circuit Court, Southern District of Ohio, Western Division.

In Equity. No. 6280.

THE GOODYEAR TIRE & RUBBER COMPANY
vs.
THE RUBBER TIRE WHEEL COMPANY and CONSOLIDATED RUBBER TIRE COMPANY.

Præcipe.

To the Clerk of the U. S. Circuit Court:

Please include in the transcript under the appeal in the United States Circuit Court of Appeals of the Sixth Circuit the following papers:

49 1. The amended petition filed on or about the 9th of September, 1908, and the affidavit of F. A. Seiberling, attached to said bill.

2. The affidavit of F. A. Seaman, filed October 19th, 1908, and July 7th, 1908.

3. The amended answer filed November 3rd, 1908.

4. The rebuttal affidavits on behalf of the Goodyear Co., to-wit: Seiberling, Stadelman and Measure, filed November 19th, 1908, there being three affidavits of Charles Measure, one executed November 9th, 1908.

5. The restraining order granted by Judge Sater, September 9th, 1908, and the decision of Judge Sater, October 9th, 1909, and the order for preliminary injunction and the order granting same November 23rd, 1909.

6. The original bill filed August 23rd, 1907.

7. The petition for appeal, assignment of errors and bond.

STALEY & BOWMAN,
Attorneys for Defendants.

Entry.

And afterwards, to-wit: on the 17th day of January, A. D., 1910, an entry was made on the journal of said court, in said cause, which said entry is clothed in words and figures following, to-wit:

No. 6280.

GOODYEAR TIRE AND WHEEL CO.
VS.
THE RUBBER TIRE WHEEL CO. & CONSOLIDATED RUBBER TIRE CO.

Upon motion of defendant the time for the filing of the transcript in the above entitled case is hereby extended fifteen days from the 21st day of January, 1910.

The United States Circuit Court, Southern District of Ohio, Western Division.

No. 6280.

THE GOODYEAR TIRE & RUBBER COMPANY
VS.
THE RUBBER TIRE WHEEL COMPANY and the CONSOLIDATED RUBBER TIRE COMPANY.

I, B. E. Dilley, clerk of the court aforesaid, do hereby certify that the foregoing contains all of the pleadings, exhibits and testimony ordered to be certified by Staley & Bowman, attorneys for the defendants, the Rubber Tire Wheel Company and the Consolidated Rubber Tire Company, including the affidavits submitted on the

hearing for the order of injunction which was granted the 23rd day of November, 1909, in the above entitled cause.

50 In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this 4th day of February, A. D., 1910.

[SEAL.]

B. E. DILLEY, *Clerk*,
By HARRY F. RABE, *Deputy*.

United States Circuit Court of Appeals for the Sixth Circuit.

UNITED STATES OF AMERICA,
Sixth Judicial Circuit, ss:

To the Goodyear Tire & Rubber Company, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Sixth Circuit, to be holden at the city of Cincinnati, in said circuit, on the* 21st day of January next, pursuant to a petition for appeal, filed in the clerk's office of the Circuit Court of the United States for the Southern District of Ohio, Western Division, wherein the Rubber Tire Wheel Company and Consolidated Rubber Tire Company are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants as in the said petition for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 22nd day of December, in the year of our Lord one thousand nine hundred and nine, and of the Independence of the United States of America the one hundred and thirty-fourth.

J. E. SATER,
Judge of United States District Court for Southern District of Ohio, Sitting and Holding United States Circuit Court.

*Not exceeding 30 days from the day of signing.

Service hereof acknowledged this 31st day of December, 1909.

H. H. TOULMIN,
Sol. for Appellee.

No. 6230. United States Circuit Court, Southern District of Ohio, Western Division. The Goodyear Tire & Rubber Company, Appellant, vs. The Rubber Tire Wheel Company and Consolidated Rubber Tire Company, Appellees. Citation on Appeal. Staley & Bowman, Solicitor for Appellant.

50½ And afterwards, to-wit, on the 8th day of February, 1910, an appearance was filed in said cause, clothed in the words and figures, following:

United States Circuit Court of Appeals for the Sixth Circuit.

No. 2037.

THE RUBBER TIRE WHEEL Co. et al.
vs.
THE GOODYEAR TIRE & RUBBER Co.

Frank O. Loveland, Clerk of said Court:
Please enter our appearance as Counsel for the appellants.
PAUL A. STALEY.
BORDER BOWMAN.

And afterwards, to-wit, on the 7th day of October, 1910, an entry was made on the journal of said Court in said cause clothed in the words and figures, following:

United States Circuit Court of Appeals for the Sixth Circuit.

No. 2037.

THE RUBBER TIRE WHEEL Co. et al.
vs.
THE GOODYEAR TIRE — RUBBER Co.

51 This cause is argued in part by Mr. Border Bowman for the Appellant- and is continued until Monday, October 10, for further argument.

And afterwards, to-wit, on the 10th day of October, 1910, an entry was made on the journal of said Court in said cause, clothed in the words and figures following:

United States Circuit Court of Appeals for the Sixth Circuit.

No. 2037.

THE RUBBER TIRE WHEEL Co. et al.
vs.
THE GOODYEAR TIRE — RUBBER Co.

Before Severens, Warrington, and Knappen, JJ.

This cause is further argued by Mr. Border Bowman for the Appellant- and by Mr. H. A. Toulmin for the Appellee and is submitted to the Court.

And afterwards, to-wit, on the 6th day of December, 1910 a decree was filed in said cause, clothed in the words and figures following:

United States Circuit Court of Appeals for the Sixth Circuit.

No. 2037.

THE RUBBER TIRE WHEEL COMPANY and THE CONSOLIDATED RUBBER TIRE COMPANY
vs.
THE GOODYEAR TIRE — RUBBER COMPANY.

52 Appeal from the Circuit Court of the United States for the Southern District of Ohio.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of Ohio, and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said Circuit Court, in this cause be and the same is hereby affirmed with costs, subject to a modification so limiting the order of injunction as to apply only to the prosecution of the suit against John Dogherty.

And afterwards, to-wit, on the 15th day of December, 1910 an opinion was filed in said cause which is as follows:

(*Opinion.*)

53 Filed Dec. 15, 1910. Frank O. Loveland, Clerk.

United States Circuit Court of Appeals, Sixth Circuit.

No. 2037.

THE RUBBER TIRE WHEEL COMPANY and THE CONSOLIDATED RUBBER TIRE COMPANY, Appellants,
v.
THE GOODYEAR TIRE AND RUBBER COMPANY, Appellee.

Appeal from the Circuit Court of the United States for the Southern District of Ohio.

Argued October 10, 1910. Decided December 6, 1910.

Before Severens, Warrington and Knappen, Circuit Judges.

This cause is here upon appeal from an interlocutory order made in the court below enjoining appellants, pendente lite, from instituting or prosecuting certain suits against customers of appellee. The suit was begun by a bill in equity of the appellee, as complainant, against the appellants as defendants. It is averred in the bill that

complainant is engaged in the business of manufacturing and selling solid rubber tires for vehicles; that in 1900 defendants sought by suit commenced in the Circuit Court of the United States for the Northern District of Ohio, to enjoin the present complainant from making and vending its tires on the ground that they embodied the elements of a certain patent issued to one Grant in 1896, No. 554,675, for rubber tired wheels, the letters patent having been acquired by the present defendants; that the suit resulted ultimately in a decision of this court holding the Grant patent to be null and
54 void and directing that the bill be dismissed; and that a petition for a writ of certiorari to this court was subsequently denied by the Supreme Court. It is further averred in the present bill that notwithstanding such adjudged nullity of the Grant patent, the defendants are seeking to enforce it against customers of complainant, some of whom are specially named in the original bill and an amendment thereto, and against whom suits have been brought; that many of its customers are being intimidated by such suits and by threats made by defendants to commence suits against others, some withholding orders for complainant's rubber tires unless indemnified by it. An injunction is prayed against defendants from so diverting and interfering with complainant's business and trade in rubber tires.

In the opinion rendered in the court below allowing the interlocutory order this statement of facts appears:

"In July, 1908, the defendants in this case, who were the complainants in the original suit brought in the Northern District of Ohio, filed a bill in one of the Federal Courts sitting in New York, to restrain and enjoin one Doherty from infringing the Grant patent. Doherty is a small dealer, of small means, and has been a customer of the complainant since December, 1907. The affidavit shows him to have stated that some persons unknown to him, desiring to equip a carriage wheel with a rubber tire, directed that the tire must be of the complainant's manufacture, and Doherty thereupon purchased such a tire. Thereafter Roberts, New York manager of the Consolidated Tire Company, before the fitting of a rubber to the wheel, directed him to buy the necessary wiring and steel channel of some one other than the complainant or any of its agents or branch houses. He thereupon purchased the wire of B. F. Goodrich, and the steel channel of The Rutherford Rubber Company. He says he was further directed by Roberts to mark the wheel to which he applied the tire so he could identify it, and to send his bill for services rendered to the company of which Roberts was the New York Manager. Doherty did this and credit was given him on his account by such company. The evidence is undisputed that Doherty purchased his materials as above stated and fitted them to the carriage wheel. The statements attributed to him are not denied."

55 By the preliminary injunction the appellants are restrained, pendente lite, from prosecuting the suit against Doherty (mentioned in the statement quoted), and also from "instituting, maintaining or prosecuting any action in any court of the United States, based on alleged infringement of letters patent No. 554,675

* * * against any person, firm or corporation for dealing in, buying, selling or using any of complainant's solid rubber tires or any of the component parts thereof"; and also "from interfering with the business of complainant by threatening to bring such suits against complainant's customers, whether the business conducted with those customers is the vending to them of the whole of complainant's tire or some one or more of the elements which enter into it."

WARRINGTON, *Circuit Judge* (after stating the facts as above):

The important question concerns appellants' suit against John Doherty, and the preliminary injunction granted in the present case against the further prosecution of that suit. One objection made is that the court below relied on affidavits containing hearsay statements. Doherty is one of appellee's customers whose names are not stated in the pleadings, but against whom as a class threats of suit are alleged to have been made by appellants. Doherty has admittedly been a customer of appellee in the purchases of rubber tires since 1907; and the facts that he purchased a solid rubber tire of appellee and placed it on a wheel and received his pay from one of the appellants as found by the court below, are not open to the charge of hearsay and are not disputed. The hearsay statements are those tending to show that one of appellants caused orders for purchases of materials by Doherty and the work done by him to be given and executed in a particular way and with a view of instituting against him the suit before mentioned. Whether hearsay statements can be considered or not on interlocutory motion (Chase's Stephen's Dig. Ev. 2d Ed. 311, note 4), or whether effective waiver could arise through failure as here to present any motion, objection or
56 denial in the court below concerning such statements (San Pedro &c. Co. v. United States, 146 U. S. 120, 137; White v. Wansey, 116 Fed. C. C. A. 6th Cir. 345, 347) we need not decide; for, as before indicated, the facts which we regard as material were shown by direct evidence. Then in addition to the averments of a portion of the bill, which are in substance set out in the statement, it is stated among other things in the amended answer:

"* * * defendants do know and aver the fact to be that in the trade a carriage manufacturer often handles and sells different makes of rubber tires, and that the practice in trade is to purchase rubber, namely: one element of a combination of the Grant patent, from rubber companies and apply this rubber themselves by means of special machinery, or have it applied for them by some blacksmith or machine company, to channel irons furnished by the customer of said carriage company or purchased direct from some steel or rubber company, or furnished direct from some steel or rubber company, and that a large part of the rubber tire business of the carriage manufacturer is often done by applying the rubber by means of two independent retaining wires to their own make of wheels and to wheels furnished them having different makes of channel irons, but all of that peculiar shaped rim which co-operates

with the two independent retaining wires and the rubber to form the Grant patented combination; * * *"

The result is that the features of the Doherty case, which consist of his purchase of the solid rubber tire from appellee, the wire from Goodrich, and the steel channel from the Rutherford Rubber Co., and of then assembling these articles in violation of the terms of the Grant patent, present one of the typical cases described in appellants' amended answer, not to speak further of the bill; and learned counsel for appellants insist that "the pivotal question in this case is whether the court in construing the Grant patent can treat any one element as more material than some other element."

We thus reach a consideration of the restraint of the interlocutory order upon appellants' prosecution of the Doherty suit. The basis of that suit is the Grant patent. As pointed out in the state-
57 ment, in a suit between the parties to the present action the Grant patent was adjudged invalid, the decision being that it was "void for want of patentable novelty." Goodyear Rubber Co. v. Tire & Rubber W. Co., 116 Fed. (C. C. A. 6th Cir.), 363, 377. It was a combination patent, its first claim consisting of three elements, viz., a metallic channel rim, a solid rubber tire, and independent retaining wires passing entirely through the rubber tires horizontally (Id. 365-6). So far as the effect of the decree in that case is concerned, counsel for appellants in substance admit that if Doherty had purchased all of these elements—the rim, the tire and the wires—from appellee, complete privity between appellee and its customer would have arisen, and so have justified the preliminary injunction as to him. This of course includes the further concession on the part of counsel that one effect of the former judgment is, that where a court of equity as here has jurisdiction of appellants it may enjoin them by decree in personam from doing any acts at places beyond the jurisdiction of the court, as well as within it, which would interfere with the right of appellee to make sales of all as distinguished from part of the elements (the articles aforesaid) embraced in the patented combination. The concessions so made, as under the authorities they were bound to be, render it unnecessary to do more with respect to the history of the Grant patent than allude to the fact that the patent was held to be valid in a case to which appellee was not a party. Consolidated Rubber Tire Co. v. Firestone T. & R. Co., 151 Fed. (C. C. A. 2nd Cir.) 237; a number of cases in which the patent was involved, are cited in Consolidated Rubber Tire Co. v. Diamond Rubber Co., 157 Fed. (C. C. A. 2nd Cir.) 667.

The point of departure from the concessions of counsel, as well as their insistence, is that the protection of the former judgment cannot be invoked respecting sales of one or less than the whole of the elements covered by the combination. As it seems to us, counsel refuse to accord due effect to the main feature of the bill. It is injury to appellee's business, through interference with its customers, that is made the subject of complaint.

58 In Goodyear Tire & Rubber Co. v. Rubber Tire & W. Co., et al., 164 Fed. 869, the present appellee sought by bill to en-

join defendants from interfering with one of complainant's customers, who was doing business in Havana. One of the allegations of the bill was that under the protection of the former decree complainant was making rubber tires to sell to all who would buy. An interlocutary injunction was denied but solely upon the ground that defendants had registered the Grant patent in the Republic of Cuba, and so had obtained "a Cuban patent for the same invention" (877). In other words, the court could not protect the present appellee in virtue of the decree declaring the Grant patent void, without interfering with independent rights acquired by defendants through the Cuban grant respecting business carried on in Cuba. It is true that the point now relied on concerning sales of only one element of the combination, does not appear to have been presented. But apparently it was as open to consideration there as it is here. The case was heard before Judge Lurton, sitting in the Circuit Court, and in the course of the opinion he said (871):

"This court, as a court of equity having jurisdiction over the persons of the defendants, may control them, by decree in personam, from doing any act within or without the jurisdiction, at home or abroad, by bringing suit or otherwise, which shall be an interference with the right of the complainant to prosecute its business without interference with the defendants by virtue of the Grant patent."

In Kessler v. Eldred, 206 U. S. 285, the right of a holder of one patent, who had failed in a suit for infringement against the holder of another patent, to maintain an action against a customer of the latter for using one of the latter's patented devices, was passed upon; and one of the controlling features of the decision is that such a suit if not enjoined would in violation of the previous judgment interfere with the business of the successful party in the original infringement suit.

Counsel for appellants earnestly endeavor to distinguish that case, on the ground that the customer was there using the entire
59 patented device. They place stress upon the following language of Mr. Justice Moody, who announced the opinion of the court (288):

"Whether the judgment between Kessler and Eldred is a bar to the suit of Eldred v. Breitwieser (the customer of Kessler and user of his device), either because Breitwieser was a privy to the original judgment, or because the articles themselves were by that judgment freed from the control of that patent, we deem it unnecessary to inquire. We need not stop to consider whether the judgment in the case of Eldred v. Kessler had any other effect than to fix unalterably the rights and duties of the immediate parties to it, for the reason that only the rights and duties of those parties are necessarily in question here. It may be that the judgment in Kessler v. Eldred will not afford Breitwieser, a customer of Kessler, a defense to Eldred's suit against him. Upon that question we express no opinion. Neither it nor the case in which it is raised are before us."

It would seem also that questions of the character there stated are not before this court, and for the same obvious reasons. But it is difficult to perceive why the absence of such questions renders the

decision inapplicable to the present case; nor are we able to understand why the principles announced in that decision are not in point here. It is plain that Kessler did not gain any more freedom through the result of Eldred's infringement suit to manufacture and sell the Kessler device, than the Goodyear Company acquired respecting the Grant device in its original suit with the present appellants. Can it be that such freedom as to the whole device, does not include its parts as well separately as collectively? Why, as between the parties to the present suit, did not the former judgment operate to remove the ban of the Grant patent from each of its elements, and also to destroy all right to the combination of those elements? It was found in the opinion declaring the invalidity of the Grant patent that its parts, as also the result accomplished by the combination, were alike old in the art. (116 Fed., pp. 369, 371.)

It appears that the appellee in fact both before and at the date of the Grant patent, conducted the business, and that it has ever since then maintained the business, of manufacturing and selling
60 rubber tires. Manifestly that business, irrespective of the wire and rim trade, must in truth be impaired if the appellants are to be allowed to prosecute suits against appellee's customers for rubber tires. There is no pretense that such suits can be maintained, except through the Grant patent.

Returning to Kessler v. Eldred, it was said by Mr. Justice Moody (288-9):

"But the question here is whether, by bringing a suit against one of Kessler's customers, Eldred has violated the right of Kessler. The effect which may reasonably be anticipated of harassing the purchasers of Kessler's manufactures by claims for damages on account of the use of them, would be to diminish Kessler's opportunities for sale. No one wishes to buy anything, if with it he must buy a law suit. * * * Leaving entirely out of view any rights which Kessler's customers have or may have, it is Kessler's right that those customers should, in respect of the articles before the court in the previous judgment, be let alone by Eldred, and it is Eldred's duty to let them alone. The judgment in the previous case fails of the full effect which the law attaches to it if this is not so."

Now, keeping in mind, in the first place, the distinction between the rights of Kessler as against Eldred and those of Eldred as against Breitwieser, and, in the next place, the right of Kessler in that suit to have his right vindicated as against Eldred regardless of the latter's rights against Breitwieser, the relevance of the principle of the Kessler case to the case in hand becomes apparent. Kessler's right as against Eldred to make and sell the Kessler device had been established against Eldred's charge of infringement, not of invalidity, of the Eldred patent. The present appellee's right as against appellants to make and sell solid rubber tires, metal rims and wire, was adjudged to be unaffected by the Grant patent because it was invalid and void. The inevitable effect of the final adjudication, as between these parties, was, we think, to restore appellee to the same rights respecting the sale of its tires that it would have possessed had the Grant patent never been issued. To say anything less than this—to

say that appellee may sell all the elements of the Grant patent as an entirety but may not sell them separately—is to deny to ap-
61 pellee in regard to a void patent a privilege equivalent even to that accorded to a licensee under a valid patent to use less than the whole of the patented device (Young v. Foerster, 37 Fed. 203, 204) or to a purchaser of a valid patented device to use as part of it an unpatentable article (Morgan Envelope Co. v. Albany Paper Co., 152 U. S. 425, 433). It follows that appellee's right as against appellants to make sales of any or all of the articles comprised in the Grant patent is at *last* referable to that principle which recognizes an absolute power in every man to dispose of his own property. The sanction then of any result of the former judgment which necessarily hampers and injures the successful party to the suit in the prosecution of its business, would be at once illogical and unjust.

The effort made to escape this through the decisions of Aspden v. Mason, 4 How. 467, and Birdsell v. Shaliol, 112 U. S. 485, cannot be sustained; those cases are not analogous. It is manifest that the elements of the Grant patent and the rights of the parties in respect of each of those elements, as well as the combination, were involved in the issues of the original case in the sense that they were heard and adjudged on their merits; and consequently the subject matter of the former suit and judgment must in accordance with familiar principles be held to have included the subject matter of this suit.

In respect to the license agreement, it is sufficient to say that it was entered into expressly without prejudice to the rights of any of the parties in August, 1903, for one year, and was neither renewed nor observed thereafter. If the agreement was not invalid on its face, which we do not decide, we are unable to see how anything done in pursuance of it could as claimed estop appellee from insisting upon the observance of the right adjudged in its favor in the former suit.

We are not satisfied, however, with the scope of the preliminary injunction. The suit commenced by appellants in St. Louis does not involve appellee's make of tires. The pleadings respecting the firm of Jose Alvarez & Co. of Cuba, do not seem to change the situation touching the Cuban patent, as explained in Good-
62 year Tire & Rubber Co. v. Rubber Tire Wheel Co., supra. But apart from these observations, we do not think that a proper showing was made to require a preliminary injunction as to acts alleged in respect to customers other than Doherty; we are of opinion, however, that the order should stand as to the prosecution of the suit against him. It is not contended as plainly it could not be that the remedy in equity cannot be invoked to prevent the prosecution of a single case like that against Doherty. (Kessler v. Eldred, at p. 289.)

The order must be modified as thus indicated; and subject to this, the order of the court below granting the preliminary injunction will be affirmed with costs.

63 United States Circuit Court of Appeals for the Sixth Circuit.

I, Frank O. Loveland, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of the record and proceedings in the case of The Rubber Tire Wheel Co. et al. vs. The Goodyear Tire Rubber Co. No. 2037, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said Court, at the City of Cincinnati, Ohio, this 2nd day of May, A. D. 1911.

[Seal United States Circuit Court of Appeals, Sixth Circuit.]

FRANK O. LOVELAND,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

64 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Sixth Circuit, Greeting:

Being informed that there is now pending before you a suit in which The Rubber Tire Wheel Company and The Consolidated Rubber Tire Company are appellants, and The Goodyear Tire & Rubber Company is appellee, No. 2037, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the Circuit Court of the United States for the Southern District of Ohio, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the
65 United States, Do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 26th day of October, in the year of our Lord one thousand nine hundred and eleven.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

United States Circuit Court of Appeals for the Sixth Circuit, *ss:*

I, Frank O. Loveland, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the transcript of record of the proceedings of this Court in the within entitled case heretofore certified by me for filing in the Supreme Court of the

United States was correct and complete as the same then appeared in this Court.

In pursuance of the command of the foregoing writ of certiorari I now hereby certify that on the 13th day of November 1911, there was filed in my office a stipulation in the above entitled cause in the following words towit:

"United States Circuit Court of Appeals for the Sixth Circuit.

No. 2037.

THE RUBBER TIRE WHEEL COMPANY and THE CONSOLIDATED RUBBER TIRE COMPANY, Appellants,

vs.

THE GOODYEAR TIRE & RUBBER COMPANY, Appellee.

Stipulation.

It is hereby stipulated that the certified transcript of the record in this court now on file in the Supreme Court of the United States may be taken as a return to the writ of certiorari granted by the Supreme Court of the United States.

November 9, 1911.

LAWRENCE MAXWELL,
Counsel for Appellants.
H. A. TOULMIN,
Counsel for Appellee.

I further certify that the above is a true and correct copy of the said stipulation and of the whole thereof.

Witness my signature and the seal of the said United States Circuit Court of Appeals for the Sixth Circuit at the city of Cincinnati, Ohio, in said Circuit this 13th day of November 1911.

[Seal United States Circuit Court of Appeals, Sixth Circuit.]

FRANK O. LOVELAND,
Clerk U. S. Circuit Court of Appeals for the Sixth Circuit.

66 [Endorsed:] File No. 22,709. Supreme Court of the United States. No. 633, October Term, 1911. The Rubber Tire Wheel Company et al. vs. The Goodyear Tire & Rubber Company. Writ of Certiorari. Filed Nov. 13, 1911. Frank O. Loveland, Clerk.

67 [Endorsed:] File No. 22,709. Supreme Court U. S., October term, 1911. Term No. 633. The Rubber Tire Wheel Company et al., Petitioners, vs. The Goodyear Tire & Rubber Company. Writ of Certiorari and Return. Filed November 15, 1911.